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PRINT AND ELECTRONIC MEDIA: THE CASE FOR FIRST AMENDMENT PARITY

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HON. BOB PACKWOOD, *Chairman*

FOR THE USE OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION
UNITED STATES SENATE

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LETTER OF TRANSMITTAL

U.S. Senate,
Committee on Commerce, Science,
and Transportation,
May 3, 1983.

Dear Colleague: I am submitting herewith the report of the National Telecommunications and Information Administration (NTIA) on the case for first amendment parity between the print and electronic media.

This report contains a thorough summary of the history of the first amendment, and traces the development of Government regulation of broadcasting. Although the first amendment protects the print media from Government interference, the electronic media are extensively regulated by the Government.

The primary rationale used to justify this regulation has been "spectrum scarcity," the notion that electronic outlets are severely limited. As this document makes clear, improvements in technology have radically altered the communications industry since the passage of the Communications Act of 1934. Spectrum scarcity no longer is a valid rationale, and the regulatory framework based upon that premise should be revised accordingly.

The Senate has acted to trim back some of these outdated regulations, but more work remains. This report should serve as a catalyst for these much-needed reforms.

Cordially,

Bob Packwood,
Chairman.

LETTER OF SUBMITTAL

U.S. DEPARTMENT OF COMMERCE,
THE ASSISTANT SECRETARY FOR
COMMUNICATIONS AND INFORMATION,
Washington, D.C., February 16, 1983.

Hon. BOB PACKWOOD,
Chairman, Committee on Commerce, Science, and Transportation,
U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: I respectfully submit the following staff report concerning broadcast content regulation, as the Committee requested. This staff report analyzes the scarcity rationale that has been used to distinguish between electronic and print media for first amendment purposes. It concludes that traditional justifications for differing treatment of these media are no longer valid.

The staff report compares the growth of the electronic and print media throughout the twentieth century. The data collected documents that if spectrum scarcity ever existed, it does not exist today. The NTIA staff found, for example, that by 1980, 60 percent of American cities had available eight or more channels of television. In that same year, however, only 2.5 percent of those cities had two or more competing daily newspapers. These findings support the view that the time has come for the print and electronic media to become equal partners in the free marketplace of ideas.

I trust this staff report is responsive to your request and will be of benefit to the Committee as it considers proposals to provide first amendment parity for all media.

Sincerely,

BERNARD J. WUNDER, JR.

Enclosure.

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INTRODUCTION

The framers of our Constitution had first-hand experience with governmentally enforced restrictions on speech and the press. Indeed, the years preceding the American Revolution provided convincing evidence of the value of a free press in aiding challenges to arbitrary power. After gaining independence from England, the Founding Fathers incorporated the idea of a free press into the framework of the new government. It was thus not accidental that first among the rights guaranteed by the Constitution were the freedoms of speech and of the press.

Not until the 20th century was the corpus of First Amendment law fully developed; today, however, most government restrictions on the expression and dissemination of ideas in print are strictly limited by the Constitution. While the courts have recognized that the electronic media (chiefly radio and television) are included in the "press" whose freedom is guaranteed by the First Amendment[1], because of a perceived "scarcity" of outlets the electronic media have not yet been accorded First Amendment rights on an equal footing with the print media.

This paper analyzes the historical underpinnings of the First Amendment, from the introduction of the Gutenberg press, to licensing of presses in England and the colonies, to its adoption in 1791, and, finally, its current interpretation. Also examined is the development of radio technology, early problems which created "chaos in the airwaves," and the system of spectrum allocation and management ultimately adopted by the Congress.

By 1934, it was well accepted by Congress and the FCC that the electromagnetic spectrum had finite capabilities. Its scarce quality made it impossible for all who wanted to use it to do so effectively. Because of its "scarcity," those granted the "privilege" of using the spectrum for broadcasting were required to abide by a variety of program content regulations as the quid pro quo for using a scarce commodity, albeit no fee was imposed for the use of the electromagnetic spectrum. By 1943, the U.S. Supreme Court in the NBC case had accorded its imprimatur to this concept. To this day, those using the airwaves to express views, ideas, or to provide entertainment, must abide by a host of Government regulations affecting the content of programming.

This paper, accordingly, also analyses the validity of the traditional "scarcity" rationale and concludes that if spectrum scarcity ever existed, it certainly does not today. In fact, particularly when compared to the declining number of print media outlets, today there exists an increasing abundance of electronic media. For instance, in 1980, 60 percent of U.S. communities enjoyed access to eight or more broadcast television channels. In that same year, however, only 2.5 percent of American cities were served by two or more competing daily newspapers. [See Section IV, infra]

The 1980s promises an exponential growth of electronic media outlets. Existing technology now being implemented include 100+ channel coaxial cable systems, microwave multipoint distribution systems, low power television, teletext, and direct broadcast satellites, to name but a few. By the end of the decade the total number of electronic media outlets available in most American communities will more than double. During the same period little growth is foreseen in the number of print media outlets generally available.

Considering the abundance of electronic media outlets available today and those likely to develop soon, it is difficult to rationalize the continuation of Government content regulations based on the notion of scarcity of available electronic outlets. Just as the Supreme Court has determined that an informed public will be best served by an unregulated newspaper industry[2], unleashing the electronic media from Government content regulation might best further the goals enshrined by the First Amendment.

Footnotes

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[1] "Television is 'Press." (There is . . . no doubt that movie pictures, like newspapers and radio, are included in the press whose freedom is guaranteed by the First Amendment. . ." Zamora v. Columbia Broadcasting Systems, 480 F. Supp. 199, 205 (S.D. Fla. 1979), quoting United States v. Paramount Pictures, 334 U.S. 131, 166 (1948) and Red Lion Broadcasting v. FCC, 395 U.S. 367, 390 (1943).

[2] New York Times Co. v. Sullivan, 376 U.S. 254, 279-80 (1964). Also see Miami Herald Publishing Co. v. Tornillo, 418 U.S. 241, 258 (1974).

SECTION I: FIRST AMENDMENT HISTORY

This section discusses the background and development of the First Amendment, with an emphasis on its application to print media. The first part reviews the history of press restrictions in England, which were explicitly designed to minimize published criticism of the government. The second part describes similar restrictions prevailing in the American colonies after independence. In the third part, the original meaning of the First Amendment's free press clause is discussed. Although grounded in the pre-Revolutionary experience, the idea of full press liberty was a radical one in the 17th and 18th centuries. The legal theory of press freedom that then evolved was quite conservative by contemporary standards. Not until the 20th century was the liberal theory of free press prevalent today incorporated into American law.

The final part of the section presents an outline of First Amendment theory as currently interpreted by the Supreme Court, with emphasis on the "central meaning" that government may not interfere with the content of publications or seek to suppress the advocacy of ideas with which it disagrees.

Press Restrictions in England

The printing press was invented by a German, Johannes Gutenberg, in 1456, and introduced into England some twenty years later. As early as 1486, King Henry VII had become concerned about the power of the new invention and warned against the dissemination of "forged tydings and tales."[1]

The main instruments of press control were developed by the Tudor and Stuart monarchs, and took three forms: "licensing" or censorship, libel prosecutions, and grants of privileges and monopolies to favored printers. Such restrictions were in tune with the political philosophy of the times. According to the Tudor-Stuart theory of government, the king required no unsolicited advice on how to govern. Attempts to participate in the governing process by publishing or speaking on public affairs would thus tend to undermine the authority of the Crown. In short, the rationale for early controls was that sovereignty resided in the Crown, and unrestricted printing constituted a threat to sovereignty.

Censorship, the submission of printed works for approval prior to publication, at first was applied only to religious books, but was later extended to cover all books by Henry VIII's Proclamation of 1538. Censorship laws were maintained for the next century and a half, with occasional lapses during governmental crises such as the English Civil War. Censorship or "licensing" power was delegated partly to government or ecclesiastical officials, and partly to the printers themselves.[2]

The doctrine of seditious libel was rooted in the centuries-old law of defamation, but became a key means of press control under the early Stuarts (1603-1641). A new legal weapon was needed to combat the increasing evasion of the censorship laws, the explosion of political and religious dissent, and the greater interest in literature of all kinds in this period. In essence, the doctrine made it a crime to impugn the government in print. It was first formulated by a royal court, the Star Chamber, which achieved infamy by its zealous prosecution of political and religious dissenters in the 1630s. However, jurisdiction was also asserted by the common law courts, and prosecution for seditious libel was a major tool of press suppression long after the abolition of the Star Chamber in 1641. In England, censorship ostensibly ended in 1695, but the seditious libel doctrine continued in force until the mid 19th century.[3]

Additional measures of press control included grants of privilege and patents of monopoly. Such grants were a standard method of developing infant industries during the 16th century. In the case of printing, privileges and patents served a dual purpose, protecting the printers from competition and facilitating government control over publications. Grants of privilege also served as an early form of copyright registration, designed to prevent piracy of a particular work. A patent of monopoly, on the other hand, gave the recipient the exclusive right to print a particular type of literature. By the late 16th century, patents were held for such categories as law books, grammars and school books, prayer books, English Bibles, books in Latin, almanacs, and songbooks.[4]

In addition to these specific patents and privileges, for more than a century printing itself was the monopoly of an exclusive guild, the Stationers Company. Incorporated in 1557, the Stationers Company established a _de facto_ monopoly of printing that was given royal recognition in 1585. Only master printers of the guild were allowed to operate a press, and the number of master printers was carefully limited. Thus, in 1583, 100 years after the introduction of printing, London had only 23 master printers and 55 presses. (Outside London, presses were not permitted, except for the university presses of Oxford and Cambridge.) The number of master printers remained relatively constant until the English Civil War of the 1640's, when there was an explosion of illicit printing that put great pressure on the monopoly system. After the restoration of the monarchy in 1661, however, the number of presses was again reduced from 55 to 28. In return for the royal protection they received, the printers of the Stationers Company played a major role in the censorship apparatus.[5]

The first serious crisis in the system of press control arose during the English Civil War, and resulted from three historic movements involving challenges to existing authority: Parliament's attack on the political authority of the Crown; the Puritans' rebellion against the politico-religious authority of the Anglican Church; and the efforts of dissatisfied printers to circumvent the monopolies of the Stationers Company. None of these groups, however, advanced a coherent theory of free speech, and none was yet willing to challenge the concept of press control as a matter of principle. Parliament, for example, wished to establish its right to share power with the king; but, once in control, Parliament used the existing mechanisms of press control to stifle external challenges to its own authority. In addition, after successfully asserting its own right to free discussion of affairs of state, it managed to transform this right into an additional basis for restricting expression. Statements outside the Houses of Parliament -- even by a member -- could now be prosecuted, for example, as a "breach of Parliamentary privilege."[6]

Nonetheless, the Civil War period saw valuable precedents established for the loosening of press control. Amidst the outburst of political and religious pamphlets in this period of turmoil, there occurred the first extensive discussion of the concept of a free press. Moreover, the main instruments of press restriction were permanently removed from the Crown's control and lodged in Parliament, a somewhat more accountable body.

The first major breakthrough for freedom of the press came in 1695, when Parliament declined to renew the Printing Act, thus ending both the principal system of censorship and the Stationers' printing monopolies. The reasons were mainly pragmatic. First, censorship administration had become virtually impossible given the increasing volume of printed matter. Second, the members of Parliament had found that censorship no longer served their interests. A two-party system had now evolved and, each side needed assurance of the right to publish when not in power. Third, printers and publishers had become more politicized, finding it profitable to issue pamphlets and tracts for one or another faction, and losing heart for the increasingly difficult struggle to maintain their monopolies. Finally, the common law of libel had proven a cheaper and seemingly adequate safeguard against the worst abuses of the press.[7]

Henceforth, the main controls on printing were prosecutions for seditious libel and breach of parliamentary privilege, supplemented by printing taxes and political subsidies. These methods were used more or less effectively during the 18th century, but were subject to escalating evasion and challenge. In the 1770s, Parliament finally recognized the right of newspapers to publish its proceedings. In 1792, the seditious libel doctrine was substantially diluted by the Fox Libel Act, which purported to make libel an issue for the jury. However, both seditious libel and the printing tax remained in legal effect until the mid-19th century.[8]

Colonial Restrictions

The pattern of press control in colonial America was similar to that of the mother country. Censorship was accepted as a matter of course in the early period, and was easier to enforce because of the scarcity of presses, paper, and ink. In 1662, when only two printing presses existed, both in Massachusetts, the authorities of that colony enacted a licensing law which prohibited the operation of printing presses anywhere but in Cambridge, and required prior approval of all printed matter. Formal censorship continued in Massachusetts until 1723.[9]

In Virginia, the first press did not appear until 1682, and was immediately confiscated. By royal order, no printing at all was allowed until 1730, and from 1730 to 1766, only one press was permitted: the official organ of the colonial government.[10]

In other colonies, the regime liberalized more rapidly. After the abolition of the English licensing system in 1695, there was no legal basis for censorship in most colonies. However, market conditions in the printing industry facilitated indirect means of control, similar to the patent system in Britain. Since books were very expensive to produce, American printers concentrated on more ephemeral material such as almanacs, handbills, and eventually newspapers. The most profitable source of business, however, was government work: the publication of statutes, legislative and judicial proceedings, and legal forms. Many colonial assemblies prohibited the unauthorized publication of this material, and in practice gave the work to a single printer. Like the English patents, the public printing privilege offered a great commercial advantage, and deterred the holder from publishing controversial matters or criticism of the government.[11]

Another indirect means of control was the postal franchise. Early newspaper publishers often served as local postmasters and thus gained ready access to sources of news. The postal franchise also gave control of distribution: by mailing his own publications free, and setting what rates he chose for others, a printer-postmaster could gain a strong competitive advantage.[12]

The main control mechanism, however, was prosecution for seditious libel, or related offenses. Such prosecutions were most often begun at the behest of the colonial legislatures, who could also initiate prosecution for breach of parliamentary privilege. Throughout the colonial period, the colonial assemblies indicted printers and authors with amazing frequency for the most trivial opinions or factual errors. In contrast, prosecutions by royal governors and other crown officials were rare and almost never successful. In local matters, the real governing power was exercised by the elected colonial legislatures, not the appointed royal governors or judges, and it was primarily the wrath of the legislature that the printer had to fear.[13]

The laws of libel and parliamentary privilege continued in force throughout the colonial period. However, prosecutions became increasingly difficult, owing to the recalcitrance of colonial juries. As in England, the law of libel did not allow truth as a defense, and relegated juries to a minor role in the proceedings. Nevertheless, when the defendant was popular or the victim widely disliked, the jury was apt to disregard the law.

The most famous jury revolt occurred in the trial of John Peter Zenger in 1735. A New York newspaper publisher, Zenger had attacked the unpopular governor of the colony, and was immediately prosecuted for seditious libel. Despite the judge's instructions, which followed the standard interpretation of the law, Zenger's lawyer made an eloquent appeal to the jury, arguing the truth of Zenger's publication and the general principles of free press. The sympathetic jury returned an acquittal.[14]

The Zenger trial was widely publicized, and had an immense impact on public opinion, especially during the period of agitation that preceded the Revolution. But the official law of libel did not change until after independence. Even with the adoption of the First Amendment, it was not immediately clear how, if at all, the legal status of press restrictions had been changed.

Original Meaning of the Free Press Clause

By 1776, the idea of a free press had gained a firm hold on the colonial mind. The colonists were generally familiar with the continuing debate on the subject in England, and incidents such as the Zenger trial had done much to publicize the issue. Moreover, from 1765 onwards, the rhetoric of press liberty had filled the colonial newspapers. As the colonial protests over British policies escalated, the representatives of the Crown had frequently but unsuccessfully threatened to prosecute the authors and publishers of patriotic tracts. On each such occasion, newspapers throughout the colonies came to the patriots' defense, reprinting old arguments for freedom of the press and inventing new ones. By the outbreak of the Revolution, everyone who read a newspaper had been exposed to the concept.[15]

The first constitutional document to mention freedom of the press was the Virginia Declaration of Rights of 1776, which claimed that "the freedom of the Press is one of the greatest bulwarks of liberty, and can never be restrained but by despotick Governments." This language was picked up, with modifications, by other colonies, so that by the end of the Revolution, nine of the thirteen original states had recognized a constitutional right to freedom of the press.[16] Unfortunately, the legislative history of these documents casts little light on their legal intent.

The same ambiguity characterized incorporation of the clause into the Federal Constitution. Indeed, the enumeration of a "Bill of Rights" was considered superfluous by the Framers, and was summarily rejected at the Constitutional Convention. It was later inserted by Congress primarily to defuse anti-Federalist sentiment.[17]

Similarly, when the Federal Bill of Rights was presented to the states for ratification in 1789, there was virtually no discussion of the principle of freedom of the press. Instead, the debates focused mainly on the question of states' rights: the First Amendment was thought necessary to ensure that the states, not Congress, possessed all authority over the press.[18] The discussion thus revolved around the initial clause, "Congress shall make no law... ."[19] The intent was to deprive Congress completely of regulatory authority over the press. Thus, the Amendment was perceived as a reinvocation of the enumerated powers doctrine, a guarantee that Congress would never be able to issue prior restraints nor regulate speech or press in any fashion.

If any of the Framers had a clear idea of the meaning given to the First Amendment, it was a formulation consistent with the current understanding of the common law of libel. Blackstone's Commentaries exerted an overwhelming influence on colonial lawyers. Law and theory remained unaltered despite the revolutionary rhetoric on free expression.[20] The high regard for Blackstone's position made it unlikely that any lawyer would seriously challenge his view on freedom of the press:

> The liberty of the press is indeed essential to the nature of a free state; but this consists in laying no previous restraints upon publications, and not in freedom from censure for criminal matter when published. Every freeman has an undoubted right to lay what sentiments he pleases before the public; to forbid this, is to destroy the freedom of the press: but if he publishes what is improper, mischievous, or illegal, he must take the consequence of his own temerity. To subject the press to the restrictive power of a licenser, as was formerly done, both before and since the Revolution, is to subject all freedom of sentiment to the prejudices of one man, and make him the arbitrary and infallible judge of all controverted points in learning, religion and government. But to punish as the law does at present any dangerous or offensive writings, which, when published, shall on a fair and impartial trial be adjudged of a pernicious tendency, is necessary for the preservation of peace and good order, of government and religion, the only solid foundations of civil liberty. Thus, the will of individuals is still left free: the abuse only of that free will is the object of legal punishment.[21]

The Blackstonian argument is that freedom of the press hinges upon a lack of antecedent censorship, or prior restraint, and that authors may express any opinion they choose so long as they are willing to face the criminal or civil liability which may ensue. Abuse of the right to speak or publish freely was criminally punishable. This position was almost universally accepted in the United States prior to 1800, even by such liberal thinkers as Thomas Jefferson,[22] as shown by his proposed constitution[23] for Virginia in 1783.

At most, some of the Framers may have accepted the qualified free-press principles advocated in the Zenger case: that truth is a defense to seditious libel, and the jury the proper finder of fact on the issue of libel.

By 1790, at least one state had accepted the "Zenger" theory, and had even written the theory into its own constitution. Pennsylvania's new constitution contained explicit provisions that: (1) established truth as a defense; (2) allowed the jury to decide the issue of libelousness; and (3) guaranteed the right to publish government proceedings. In other states, however, the legal status of the press remained murky. There was general agreement that both the Federal Bill of Rights and its counterparts in the states ruled out any use of "prior restraint" or censorship. Beyond this, many continued to believe that both Federal and state constitutions left untouched the common law according to Blackstone.[24]

The passage of the Alien and Sedition Acts in 1798 provoked the first steps toward a radical change in the interpretation of the First Amendment. The Sedition Act[25] included all the Zengerian principles held by contemporary libertarians: jury power to decide matters of fact and law; a requirement of criminal intent; and truth as a defense. However, it was also clearly designed as a measure of political suppression directed at the Republican Party.

Most of the polemics against the Sedition Act were based on states' rights and offered little enlightenment on the meaning of free press.[26] However, in the report on the Virginia Resolutions protesting the Act, James Madison offered a theory of First Amendment rights which is said to have "carried the day in the court of history."[27]

The theory stated by Madison rejected the theories of Blackstone and Zenger on the grounds that they drew pointless distinctions. Blackstone's distinction between prior restraint and subsequent punishment means little, Madison argued, because a subsequent punishment has the same repressive effect as a prior restraint. Similarly, the opportunity to prove truth as a defense (a Zenger theory) offers little protection, for the truth of opinions can not be proven adequately in a courtroom. In a republic, Madison argued, it was not enough to modify the law of seditious libel: the whole doctrine must be tossed out. Pointing out the differences between the British and American systems of government, he urged that the new nation required a novel definition of "free press" that would be commensurate with the responsibilities placed on citizens to govern themselves.[28]

To accept this interpretation of the Amendment, in 1800, was to accept an original idea: that a democratic society, in which the people are sovereign and the government servant, requires the open, unfettered discussion of beliefs. Today, however, Madison's libertarian position is the starting point for all interpretation of the First Amendment.

The First Amendment Today

It took a long time for the courts to accept Madison's reasoning. Alexander Hamilton, who supported the Sedition Act, restated its Zengerian principles in appealing the conviction of Harry Croswell for libelling President Jefferson.[29] Shortly, thereafter, the New York legislature amended the state law of seditious libel to incorporate the Zenger position, but stopped short of adopting Madison's liberal theory. Equivalent libel statutes existed throughout the nation, and went unquestioned by the Supreme Court until the 1920's, when it was decided that the First Amendment protections applied not only to the Federal government, but also to states' acts.[30]

Moreover, the crucial distinction between prior restraint and subsequent punishment also persisted, and was not unqualifiedly rejected until 1964, in New York Times v. Sullivan.[31] When broadcast regulation began, for example, it was still considered acceptable to penalize speech that ran counter to the "public interest," so long as one avoided prior restraint. This point of view is discernible in the provisions of the 1927 Radio Act and the Communications Act of 1934 that single out "censorship" as the only abridgment of expression that must be avoided.[32]

Today, however, it is settled that the First Amendment prohibits all undue restriction of the expression of ideas, regardless of the means employed. "Abridgment" of free expression may occur not only by prior restraint or subsequent prosecution, but by other means as well: it may be "chilled" by vague statutory prohibitions; or by the use of political affiliation as evidence of unfitness for employment.[33] Freedom of expression may also be "abridged" by bottling up traditional avenues of expression,[34] or by subjecting expressive activities to special taxes or regulations.[35]

This generous interpretation of "abridgment" has created great complexity in First Amendment jurisprudence. However, the Supreme Court has consistently refrained from recognizing an unlimited right to speak. Although the Court is often accused of merely "balancing" freedom of speech against competing governmental objectives, there is general agreement that balancing usually occurs with "the thumb of the court . . . on the speech side of the scales."[36]

The Supreme Court has also declared that "above all else, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content."[37] The Court has also made clear that there are strict limits on the amount of regulation that will be tolerated, even when fairness is the objective:

> ...The concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment..."[38]

On the other hand, government objectives not requiring interference with content are permissible, and may be pursued in ways that do not deprive speakers of a reasonable opportunity to convey their message.[39]

These general principles are followed regardless of the medium of expression. Although different media may require somewhat different approaches, it is understood that no medium for the expression of ideas is excluded from First Amendment protection. The idea that the First Amendment protects words but not pictures, or print but not film, has been unequivocally rejected.[40]

This broad-gauged, liberal view of the First Amendment has presented special difficulties for the Court when applied to the regulation of broadcasting and other electronic media. Such regulation is premised on the scarcity of radio frequencies; but in trying to cope with scarcity, Congress has mandated a scheme of regulation that deviates from basic First Amendment principles. It is to the problems of broadcast regulation that we now turn.

Footnotes

[1] F. Siebert, *Freedom of the Press in England, 1476-1776*, at 22-23,30 (1965),

[2] *Id*. at 41-63, 141-46, 260-63.

[3] *Id*. at 86-87, 116-26, 269-75, 380-92.

[4] *Id*. at 33-40, 128-30.

[5] *Id*. at 64-87, 137, 165-69, 239.

[6] *Id*. at 88-89, 101, 116, 179-80, 275-79.

[7] *Id*. at 260-63.

[8] *Id*. at 305-92.

[9] D. Boorstin, *The Americans: The Colonial Experience*, at 330 (1958).

[10] *Id*. at 332-33.

[11] *Id*. at 334-35.

[12] *Id*. at 336-338.

[13] L. Levy, *Legacy of Suppression: Freedom of Speech and Press in Early American History*, at 18-87 (1960) [hereinafter cited as *Legacy*].

[14] *Id*. at 128-33.

[15] The role of the newspaper in the struggle for independence, and the accompanying popularization of the free press principle, are comprehensively discussed in A. Schlesinger, *Prelude to Independence: The Newspaper War on Britain, 1764-1776* (1958).[Hereinafter cited as Schlesinger.]

[16] "Virginia Declaration of Rights 1776," *The Bill of Rights: A Documentary History*, B. Schwartz, ed. (1971). [Hereinafter cited as Schwartz.] *See also* Schlesinger at 298. In contrast, only two of the thirteen states recognized "freedom of speech." A right of petition and a right of assembly were included in five state constitutions. Pennsylvania's, for example, states:

> "That the people have a right to assemble together, to consult for their common good, to instruct their representatives, and to apply to the legislature for redress of grievances, by address, petition, or remonstrance." Schwartz at 262-63, 266. *See also Legacy* at 183-85.

[17] *Legacy* at 225-33.

[18] *Freedom of the Press, 1971-1972: Hearing Before the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary*, 92d Cong., 1st and 2d Sess. (1971-1972) (statement of Professor Leonard W. Levy, Professor of History and Chairman, Graduate Faculty in History, Claremont Graduate School, California). [Hereinafter cited as Levy Statement].

[19] This point is illustrated by the contrast between the final version of the First Amendment and Madison's initial proposal, made in 1787: "The people shall not be deprived or abridged of their right to speak, to write, or publish their sentiments; and the freedom of the press, as one of the great bulwarks of liberty, shall be inviolable." *See*, *The Debates and Proceedings in the Congress of the United States*, 1st Cong., 1st Sess. I, 451 (1789).

[20] *See generally*, D. Nolan, *Sir William Blackstone and The New American Republic: A Study of Intellectual Impact*, 51 N.Y.U. L.Rev. 731 (1976); and Levy Statement.

[21] W. Blackstone, *Commentaries on the Laws of England** IV, 151-152. Blackstone wrote and published his *Commentaries* from 1765-1769. The dilution of the seditious libel doctrine by the Fox Libel Act of 1792 therefore had no effect upon his position.

[22] *The Papers of Thomas Jefferson*, (J. Boyd, ed. 1950) I, 353, 598; XIII, 442.

[23] *Id*. at VI, 304.

[24] *Legacy* at 201-07.

[25] 1 Stat. 596 (1798).

[26] *The Debates and Proceedings in the Congress of the United States (1798)*, 5th Cong., 2d Sess., 2106, 2142, 2152, 2153 and 2163 (1834).

[27] New York Times v. Sullivan, 376 U.S. 254, 276 (1964).

[28] J. Madison, *The Virginia Report of 1799-1800*, 220-223.

[29] People v. Croswell, 3 John. Cas. 336 (N.Y. 1804).

[30] Gitlow v. New York, 268 U.S. 652 (1925).

[31] 376 U.S. 254 (1964). See also Congressional Research Service, *The Constitution of the United States of America: Analysis and Interpretation*, at 938, 940 (1973, Supl. 1982) [hereinafter cited as CRS].

[32] 47 U.S.C. §326, (1934) (repealing Radio Act of 1927, ch. 169, §29, 44 Stat. 1162).

[33] CRS, at 960, 964-69, 975-82.

[34] CRS, at 1018-21, 1024-28.

[35] CRS, at 997-98.

[36] H. Kalven, Jr., "The Concept of the Public Forum," *Free Speech and Association: The Supreme Court and the First Amendment* (P. Kurland, ed. 1975) at 142.

[37] Police Department of Chicago v. Mosley, 408 U.S. 92, 95 (1972).

[38] Buckley v. Valeo, 424 U.S. 1, 48-9 (1976).

[39] *See*, *e.g.*, Heffron v. Int'l Soc. for Kirshna Consciousness, 452 U.S. 640, 647 (1981); Consolidated Edison Co. v. Public Serv. Comm., 447 U.S. 530, 535 (1980); Schad v. Mount Ephrain, 452 U.S. 61, 75-76 (1981).

[40] United States v. Paramount Pictures, 334 U.S. 131, 166 (1948).

SECTION II: DEVELOPMENT OF BROADCASTING AND ENSUING REGULATION

This section discusses the development of radio technology and the confusion which initially followed. Initial use of the spectrum was subject to virtually no governmental constraint. Congress, however, became more and more concerned not only with the problem of interference, but with the power this unknown medium of communication might wield in shaping public opinion. Early attempts to control radio were aimed at bringing harmony and order to the electromagnetic spectrum. Here the legislative initiatives enacted by the Congress to remedy the chaotic use and potential misuse of the spectrum are explored.

Radio's Early Development

In 1895, Guglielmo Marconi successfully transmitted the first wireless message.[1] This event was followed by the transmission of a human voice by the wireless in 1906.[2] Between 1907 and 1912, an increasing number of amateurs began experimenting with this new means of communication, congesting the limited frequencies prevailing technology made it feasible to use and thereby causing confusion. Official naval transmissions were especially disrupted by the chaos in the airwaves.[3] Hence, it was the Navy which first exerted pressure on the Congress to legislate so as to prevent such interference with its official business.[4]

The Wireless Telegraphy Act of 1910[5] was the first legislation regarding radio transmissions; the intent of this pre-Titanic measure was to ensure the safety of those journeying by sea. The Act required ocean-going steamers leaving a U.S. port with more than 50 people on board (including crew) to be equipped with efficient apparatus for the transmission of radio communications. The Secretary of Commerce and Labor was given both administrative and enforcement powers. While the Act required the on-board equipping of ships and provided for the imposition of fines in case of violations, it did not provide for licensing requirements of radio apparatus for operators.

Two years later, the post-Titanic Radio Communications Act of 1912[6] was enacted, requiring the licensing of the radio communication apparatus if it were used for interstate commerce, or for transmission with a foreign state or a vessel. The Secretary of Commerce and Labor was authorized to revoke a license for cause, but the 1912 Act did not empower the Secretary to deny the issuance of a license. Thus, the usable spectrum of the day was quickly filled up with numerous stations each one interfering with the other.

As late as 1919, the Radio Division of the Department of Commerce had allocated only two wavelengths for radio transmission. The 360 meterband was to be used for private broadcasting and the 485 meterband had been allocated for government broadcasting functions, such as weather and crop reports.[7] Thus, only one private broadcasting station could be accommodated in a given locale unless the stations entered into what often were elaborate and unworkable time sharing arrangements. Furthermore, if the private broadcaster wanted to air a weather report the listener would have to switch to the 485 wavelength for the weather, and then back again to the 385 wavelength, due to the functional frequency allocations.

By 1921, the Commerce Department had allocated one more wavelength, 400 meterband, for the transmission of private broadcasts, thus ostensibly accommodating two full-time radio stations per area.[8] It soon became apparent, however, that many more channels were needed if persistent interference problems were to be eliminated completely.

Between 1922 and 1925, four national radio conferences were held to discuss and recommend solutions to the problem of increasing interference. At the first National Radio Conference, held in 1922, Secretary of Commerce Hoover stressed the need to eliminate radio interference and analogized it to the protection of a natural resource.[9] Hoover further expressed his concern that since the "ether" was a public resource, Government should not sanction its exploitation by a few uncontrolled entities who might use it to express their private views.[10] President Calvin Coolidge reiterated this concern two years later at the third National Radio Conference when he warned that if a few controlled the airwaves, they could control the distribution of information that the public would receive.[11] The concern was often voiced that this new far-reaching communications medium might fall into the hands of a few who could misuse it for their own private gain.

In 1923, in Hoover v. Intercity Radio Co., Inc.,[12] the Court of Appeals for the District of Columbia Circuit held that under the Radio Act of 1912 the Secretary of Commerce had no discretionary power to deny anyone a radio license who met the qualifications of the 1912 Act. The court, in dicta, however, stated that the Secretary did have the power to select frequencies which would result in the least possible interference.[13]

Soon thereafter, the second National Radio Conference issued a resolution supporting the view that the Secretary had the power to set hours of operation and determine wavelengths to be used, thereby reducing interference and improving existing radio service to the public.[14] Essentially, the Secretary based his power to exercise regulatory control not expressly provided by the Radio Act of 1912 on this resolution. As it will be discussed later, the lack of specific regulatory powers, such as the inability to deny a license, resulted in the eventual failure of the 1912 Act.

Secretary Hoover utilized the fourth National Radio Conference as a vehicle to express his views on the role of the Government in the realm of radio regulation and the rights of those who use or listen to radio communications.

> The ideal situation, as I view it, would be traffic regulation by the Federal government to the extent of the allotment of wavelengths and control of power and the policing of interference, leaving to each community a large voice in determining who are to occupy the wavelengths assigned to that community.[15]

Thus, although the government would be guarding and protecting what was considered a "natural resource," it would not interfere with the ability of stations to function. Yet, the fear of the monopolization of the available wavelengths, and a corresponding lack of diversity of voices, found expression in the tenet that the listener had to be protected:

> He [the listener] has much less option upon which he can reject, for the other fellow is occupying his receiving set. The listener's only option is to abandon his right to use his receiver.[16]

The listener only had the option of turning the radio on or off. He had neither a diversity of radio stations to turn to, nor a vast array of other mediums of communication from which to receive news, information, or entertainment.

Secretary Hoover's concern centered around the fact that given the state of the art the Government would be forced to determine who could use the available wavelengths.

> It is a simple physical fact that we have no more channels. It is not possible to furnish them under the present state of technical development... . All of these things bring us face to face with the problem which we have all along dreaded and for which we have hoped the development of the art might give us a solution; but that appears to be far off. . . . We simply must say that conditions absolutely preclude increasing the total number of stations in congested areas. . . . I can see no alternative to abandonment of the present system.[17]

It was not a desire to regulate that drove Hoover to espouse these views. It was simply that there were no viable alternatives which could then be utilized to reduce the interference and thus improve service to the listeners. In order to give regulators some guidance as to whom a license should be awarded, Hoover stressed service to the public. A licensee cannot "raise a cry of deprivation of free speech," he stated, "if he is compelled to prove that there is something more than naked commercial selfishness in his purpose."[18]

The Radio Act of 1912 was dealt a further severe setback in 1926 when a Federal court in Illinois held in United States v. Zenith Radio Corporation[19] that the Secretary of Commerce had been exercising powers not delegated him by the act. The court held the Secretary could not issue regulations -- such as specific times of operation or specific wavelengths on which a licensee could operate -- as the act did not delegate to the Secretary the power to do so.[20] Furthermore, neither the mere acquiescence to this power by licensees nor a statement of recognition of the Secretary's power by the second National Radio Conference were proper bases on which to regulate.

In response to this court decision, Secretary Hoover requested an advisory opinion from the Attorney General on the extent of his regulatory power under the Radio Act of 1912.

The Attorney General, first finding that "broadcasting" was within the parameters of the 1912 Act, stated:

> The power to make general regulations is no where granted by specific language to the Secretary. On the contrary, it seems clear. . . that, with minor exceptions, Congress left very little to the discretion of any administrative officer.[21]

Hence, the Secretary no longer had the power to change or assign wavelengths, power levels or regulate the hours of operation of the radio stations. His only function became registering the selected frequency and power levels chosen by licensees. The broadcast band became chaotic, and interference was rampant. The need for new legislation on the subject of radio regulation became all too painfully apparent.

The Radio Act of 1927[22]

> Chaos rode the airwaves, pandemonium filled every loudspeaker and the twentieth century Tower of Babel was made in the image of the antenna towers of some thousand broadcasters who, like the Kilkenny cats, were about to eat each other up.[23]

Each broadcast station was transmitting under its own individually-determined rules, at whatever wavelength, power and time it chose. Some competing stations did enter into elaborate time-sharing as well as power level agreements, but the general situation was intolerable.

Several pieces of legislation had been introduced in previous Congresses to update what many thought an ineffective and incomplete piece of legislation: the Radio Act of 1912.

It was not until the 1926 Zenith court decision, however, and the Attorney General's opinion, that the Congress understood the immediate importance of legislating on radio broadcasting.

It is important to understand the mind-set of the legislators as they faced this issue. The Teapot Dome Scandal and the Elk Hill Scandal had just recently been disclosed.[24] Private exploitation of natural resources, such as oil reserves and the rivers and streams, made each legislator sensitive to the need to safeguard other potential natural resources such as the "ether."[25] The Radio Act of 1927 essentially nationalized the radio frequency spectrum by prohibiting private ownership of channels and requiring licensees to renew licenses every three years.[26] Furthermore, the 1927 Act set the "public interest, convenience, and necessity" as the standard for the granting of a license or the transferring of a station.

The 1927 Act remedied a major shortcoming of the 1912 Act by establishing a five-member Federal Radio Commission (FRC) which was explicitly empowered to regulate and administer the provisions of the Act.[27] The legislation gave the FRC the power to classify radio stations, assign wavelengths, determine power levels, and grant, renew, and deny licenses.[28] The standard on which the FRC was to base licensing decisions, again, was the "public interest, convenience, and necessity."[29] The Act also gave the FRC power to revoke a station's license for wrongful conduct, including false statements contained in the original application, or failure to adhere to operating standards set out by the FRC.[30] Interestingly, the 1927 legislation also carried into broadcast regulation certain common carrier concepts. Section 14 of the law provided for license revocation, for example, if "any licensee has made any unjust or unreasonable charge, or has been guilty of any discrimination, either as to charge or as to service. . . ."[31]

It was chiefly fear of the power the new medium of radio could wield which prompted many of the specific restrictions to be incorporated into the bill. Congressman Johnson of Texas amply expressed the fears of the legislators of the time:

> There is no agency so fraught with possibilities for service of good or evil to the American people as the radio. . . it has limitless possibilities. The power of the press will not be comparable to that of the broadcasting stations when the industry is fully developed. . . it will only be a few years before these broadcasting stations, if operated by chain stations, will simultaneously reach an audience of over half of our entire citizenship, and bring messages to the fireside of nearly every home in America. They can hold and crystallize sentiment as no agency in the past has been able to do. If the strong arm of the law does not prevent monopoly ownership and make discrimination by such stations illegal, American thought and American politics will be largely at the mercy of those who operate these stations. For publicity is the most powerful weapon that can be wielded in a Republic, and when such a weapon is placed in the hands of one, or a single selfish group is permitted to either tacitly or other wise acquire ownership and dominate these broadcasting stations throughout the country, then woe be to those who dare to differ with them. It will be impossible to compete with them in reaching the ears of the American people.[32]

It is thus not surprising that the Radio Act of 1927 provided equal access opportunities to candidates for public office. If a broadcasting station either provided or allowed a candidate for public office access to the broadcasting facilities, then the licensee was required to afford other candidates for the same office equal opportunities.[33] The broadcast licensee was expressly prohibited from censoring the political candidates' messages; and indeed, was not allowed to censor any free speech which was transmitted over the broadcast channel unless it was obscene, indecent, or profane.[34]

Section 29 of the Radio Act of 1927 expressly prohibited censorship and the infringement of the right of free speech by radio communication. However, the fact that the FRC could review past program content in a renewal proceeding apparently did not, in the legislators' minds, violate these prohibitions. It was denied that the programming authorities bestowed upon the FRC would allow it a means to either foster or suppress certain kinds of programs. Furthermore, the independent Commission, sponsors maintained, would not become the administration's "puppet", in that it would be bipartisan. The prerogative of the FRC to examine the nature of the service provided, the requirement that licensee's maintain programming logs, and the ability of FRC to weigh acts of discrimination were merely necessary adjuncts to determining if the licensee was performing in the public interest.

> The character of the programs furnished is an essential factor in the determination of public interest but a most difficult test to apply, for to classify on this basis is to verge on censorship. . . . But in spite of the troublesomeness, these very features may be the controlling considerations in commission decision.[35]

The broadcast station, under the 1927 Act, however, was not made a common carrier for all matters of public interest.

> When we recall that broadcasting today is purely voluntary, and the listener pays in nothing for it, that the broadcaster gives it for the purpose of building up his reputation, it seemed unwise to put the broadcaster under the hampering control of being a common carrier and compelled to accept anything and everything that was offered him so long as the price was paid.[36]

It was also during the debate on the Radio Act of 1927 that the first discussion of (what subsequently was labeled) the Fairness Doctrine took place. Legislators at the time were concerned with the monopolization of the airwaves and thus the potential danger that only one side of a story or controversy might be aired.

> To perpetuate in the hands of comparatively few interests the opportunity of reaching the public by radio and allowing them alone to determine what the public shall and shall not hear is a tremendously dangerous course for Congress to pursue. . . . If any public question is to be discussed over the radio, if the affirmative is to be offered, the negative should be allowed upon request also, or neither the affirmative nor the negative should be presented.[37]

But despite this argument, the idea of a Fairness Doctrine was rejected and not included in the bill as reported.

The Communications Act of 1934[38]

In 1934 the U.S. Congress enacted a comprehensive communications bill, the Communications Act of 1934, of which Title III was devoted to radio communications. Title III essentially constituted a reenactment of the Radio Act of 1927 with respect to the regulation of electronic broadcast services. The Act, however, did provide for the expanded regulatory powers of a newly-created independent agency -- the Federal Communications Commission. The general powers of the FCC over radio services were detailed in Section 303: it was to regulate the transmission of energy or communications, or signals by radio "as public convenience, interest, or necessity requires."[39] Within the general powers delegated to the Commission, the Act of 1934 provided that the FCC could "make such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of this Act. . . ."[40]

Under the very broad guidance afforded by the public interest standard, the FCC was granted certain specific content-related powers in the regulation of radio transmissions and radio stations. The Commission was given the power: (1) to require stations to keep records of programs, transmissions or energy output levels, communications, or signals;[41] (2) to suspend a license if the licensee transmitted superfluous radio communications containing profane or obscene words, language, or meaning;[42] (3) to grant a license if it is in the public interest, convenience and necessity;[43] and (4) to revoke licenses.[44]

As in the Radio Act of 1927, the 1934 Act provided that if a licensee allowed a legally-qualified candidate for any public office to utilize the broadcasting station, the licensee must also provide equal opportunities to all other qualified candidates for that office, "provided, that such licensee shall have no power of censorship over the material broadcast under the provisions of this section."[45] A 1959 amendment provided that when the licensee broadcasts "newscasts, news interviews, news documentaries, and on-the-spot news coverage of news events," he must act in the public interest, and afford reasonable opportunity for the discussion of conflicting views on issues of public importance.[46]

The 1934 Act expressly provided that the FCC shall not have the power of censorship over radio communications, and that no regulation or condition shall be promulgated or fixed by the Commission which shall interfere with the right of free speech by radio communication.[47] This provision has usually been construed, however, to prohibit prior restraint.[48] This section, moreover, has not precluded the FCC from utilizing content-based or content-related standards in the granting, suspension, or revocation of a station's license.[49]

The FCC has instituted several content-related restrictions. For example, the FCC requires that broadcast licensees notify anyone personally attacked on a controversial issue program and give that person a chance to respond.[50] The FCC rules permit pro forma staff renewal of licenses under delegated authority only in instances where compliance with specified limits on advertising volume is promised.[51] Advertisements must also be identified by sponsor.[52] FCC rules also impose an affirmative obligation of ascertainment on the broadcast media which is not placed on the print media:[53] television broadcasters must ascertain the needs of the community, and cover issues of local interest, as well as originate a certain amount of programming locally.[54] Furthermore, the FCC requires that television licensee devote a certain amount of time to news, public affairs, and other nonentertainment programming.[55]

Those utilizing the electronic airwaves also have had other statutory restrictions placed upon them. The licensee may not transmit obscene or indecent communications,[56] nor private lottery information,[57] fraudulent information,[58] or cigarette advertisements.[59] Further Congressional restrictions prohibit the transmission of gambling information,[60] and Congress has also outlawed spurious public contests and quiz programs.[61]

These restrictions have been placed on the broadcast media and have not been similarly imposed on the print media.

This distinction has been based, in part, on the fact that there is a presumed scarcity of the airwaves. Even assuming, that at the time of the 1934 Act the scarcity rationale, that is, the lack of diversity of voices and control by a few, was legitimate and could have withstood review, the technological advances between then and now would render null and void. As early as the 1927 Act, it was recognized (*See* p. 30-31, *supra*) that if the state of the art were advanced enough, no regulation would have to be enacted imposing special duties and content-based or content-related restrictions on the broadcast media.

Footnotes

[1] L. White, *The American Radio*, at 11 (1971).

[2] *Id*. Two American inventors, Reginald Feesenden and Dr. Lee DeForest are credited with the first known successful voice transmission in the United States.

[3] E. Barnouw, *A Tower of Babel*, at 31 (1966).

[4] *Id*.

[5] Wireless Telegraphy Act of June 24, 1910, Pub. L. No. 61-262, 36 Stat. 629.

[6] Radio Communications Act of August 13, 1912, Pub. L. No. 62-264, 37 Stat. 302.

[7] *American Radio* at 128.

[8] *Id*.

[9] S. Simmons, *The Fairness Doctrine and the Media*, at 19 (1978)

[10] *Id*.

[11] *Id*. at 20.

[12] 286 F. 1003 (D.C. Cir. 1923).

[13] 286 F. at 1007.

[14] *Tower of Babel* at 121.

[15] *American Radio* at 130.

[16] J. Coons, *Freedom and Responsibility in Broadcasting*, at 110 (1961).

[17] *Id*. at 109-110

[18] *Id*.

[19] 12 F. 2d 614 (N.D. Ill. 1926).

[20] *Id*. at 618.

[21] 35 Op. Att'y Gen. 126 (1926).

[22] Radio Act of February 23, 1927, Pub. L. No. 69-632, 44 Stat. 1162.

[23] *Fairness Doctrine* at 18.

[24] *Tower of Babel* at 195.

[25] *Id*. at 195-196.

[26] 44 Stat 1162, §§1,9 (1927).

[27] 44 Stat 1162, §3 (1927).

[28] 44 Stat 1162 §4 (1927).

[29] 44 Stat 1162 §4 (1927).

[30] 44 Stat 1162 §14 (1927).

[31] *Cf*. Sta-shine Products Co. v. Station WGGB of Freeport, N.Y., Carman, Proprietor, 188 I.C.C. 271, 278 (1932).

[32] 67 Cong. Rec. 5557, 5558 (1926).

[33] 44 Stat 1162 §18 (1927).

[34] 44 Stat 1162, §18, 19 (1927).

[35] S. Davis, *The Law of Radio Communications*, at 62 (1927).

[36] *Freedom in Broadcasting* at 121.

[37] *Id*. at 23.

[38] Communications Act of 1934, 47 U.S.C. §§151 *et seq.*

[39] Title III, Communications Act of 1934, 47 U.S.C. §§301-303.

[40] 47 U.S.C. §303(r).

[41] 47 U.S.C. §303(j).

[42] 47 U.S.C. §303(m)(D).

[43] 47 U.S.C. §309.

[44] 47 U.S.C. §312(a) .

[45] 47 U.S.C. §315(a).

[46] 47 U.S.C. §315(a).

[47] 47 U.S.C. §326.

[48] *See*, *e.g.*, FCC v. Pacifica Foundation, 438 U.S. 726 (1978).

[49] *See*, *e.g.*, Fidelity Telev., Inc. v. FCC, 515 F.2d 684, 705 (D.C. Cir. 1975) (Bazelon, C.J., concurring).

[50] 47 C.F.R. 73.1920 (1980). *See also* Strauss Commun., Inc. v. FCC, 530 F.2d 1001 (D.C. Cir. 1976).

[51] 47 C.F.R. 0.281(a)(7)(i)(1981).

[52] *See*, *e.g.*, Program Length Commercials, 39 F.C.C. 2d 1062 (1973).

[53] 47 C.F.R. 0.281(a)(8)(i) (1981).

[54] 47 C.F.R. 73.1120(b)(2) (1980).

[55] 47 C.F.R. 0.281(a)(8)(i) (1981). *But see*, In the Matter of Deregulation of Radio, Report and Order in BC Docket 79-219, 46 Fed. Reg. 13888, 49 R.R. 2d 1 (1981).

[56] 18 U.S.C. §1464 (1948).

[57] 18 U.S.C. §1304 (1948).

[58] 18 U.S.C. §1343(1952).

[59] 15 U.S.C. §1335 (1965).

[60] 18 U.S.C. §1084 (1961).

[61] 47 U.S.C. §509 (1960).

SECTION III: SCARCITY RATIONALE

In this section we review the development of the scarcity rationale and resulting content restrictions imposed by the Congress, the federal agencies, and the courts.

As discussed previously, since the early days of radio technology the electromagnetic spectrum has been considered a scarce resource, and this has provided the chief justification for government regulation of its use. Government involvement began with the licensing of ship-to-shore radio operators in 1910, long before radio broadcasting congested the airwaves. Radio broadcasting grew rapidly thereafter, and soon several hundred stations were operating across the country. Early attempts to regulate use of the spectrum by hours of operation or power limitations proved unworkable. These feeble attempts to regulate the use of the spectrum were further compounded by court decisions invalidating the early regulatory schemes. By 1925, the congestion had become so acute that it threatened the viability of commercial radio broadcasting.

Faced with chaos in the airwaves, in 1926 Secretary Hoover urged the Congress to enact legislation that would achieve order for the new technology. Congress responded with the Radio Act of 1927, which established the Federal Radio Commission (FRC), and vested it with power to control and license the use of the spectrum. The Act also established the concept of licensees as public trustees of a scarce resource, and borrowing from railroad regulations, the notion that its use shall be subject to a fundamental public convenience, interest, and necessity standard.[1] What began as a means of licensing ship-to-shore radio operators, and later as an attempt to police interference among stations, developed into a governmentally imposed system of allocations.

One of the FRC's early decisions involved the allocation of frequencies between 540-1080 kHz for AM radio broadcasting, allowing 10 kHz spacing between channels. Sixty channels of AM radio were thus made available, although due to subsequent clear channel designations, power restrictions, and terrain limitations, relatively few channels were made available in most communities. Prevailing technology and the emergence of a limited number of national networks reinforced the common view that only a few channels were physically available. A system of administered scarcity was generally perceived as a function of physical limitations which even then may not actually have existed.

What is Scarcity?

A scarce resource, of course, is one for which demand exceeds supply. When the FRC decided to control traffic among radio stations by dividing a limited amount of spectrum space into a certain number of channels, it created a finite number of channels available for radio broadcasting, and hence, a scarcity.[2] The Government in this fashion created a technological scarcity. New entry into broadcasting was not necessarily foreclosed, as an existing station could be bought, but the total number of electronic media voices was fixed initially by administrative fiat.

Scarcity can be the product of economic factors as well. In theory, access to the print media is unlimited. Would-be publishers may through mimeograph or photocopying accomplish the dissemination of news, information, and ideas. Most would agree, however, that there are significant scale economies in the publishing business, not only in the printing, but in the associated marketing and distribution of the product as well. Entry into many facets of the print business, most notably daily newspapers, is as a consequence effectively quite limited, not by government but by economic forces.

Scarcity as a Justification for Content Regulation

The FRC had been constituted for less than two years when it first confronted an issue of content regulation. A Chicago radio licensee applied for an increase in power and hours of operation so that its programs, primarily of interest to organized labor, could be received by its intended audience. The Chicago Federation of Labor, the licensee, insisted there was sufficient interest and union membership in the Chicago area to warrant approval .

The FRC, however, denied the request holding that if every special interest group in Chicago wanted a station to broadcast its own programs, there would be insufficient spectrum for all. The FRC further observed that given the limited number of channels available, "there is no place for a station catering to any group . . . all stations should cater to the general public and serve public interest as against group or class interest,"[3] and the FRC action was upheld by the Court of Appeals.[4]

In the case of station KFKB in Kansas, the FRC for the first time denied a license renewal based on programming content and related considerations.[5] Dr. J. R. Brinkley was part-owner and an important figure behind the operation of the station. Dr. Brinkley also owned a pharmaceutical company, whose products he prescribed on-the-air solely on the basis of letters mailed to the station. In denying KFKB's renewal application, the FRC stated that Dr. Brinkley's practice was not generally in the public interest and was conducted only for his personal gain. The Commission further stated that the interest of "the listening public is paramount, and may not be subordinated to the interests of the station licensee."[6]

The Court of Appeals again upheld the FRC's action and cautioned it to continue considering the character and quality of radio service rendered by licensees in reviewing renewal applications. Despite KFKB's allegations of censorship, the court upheld the Commission's right to review past conduct as justifiable in light of a station's broad public interest obligations. The court distinguished program content review from the sort of prior restraint prohibited by the First Amendment.

Next in line for renewal denial by the FRC was Trinity Methodist Church, whose station KGEF was owned by the Reverend Dr. Shuler. Again, programming content was the basis for the denial of renewal. Dr. Shuler apparently had used the station to express his personal views on a variety of subjects, including certain criminal trials, prostitution, Catholics, Jews, and others. The Court of Appeals upheld the renewal denial, again distinguished a denial from prior restraint, and justified the FRC's action as consistent with its statutory public interest mandate.[7]

On at least one other occasion the FRC expounded on the need for programming to serve the needs of the general public as opposed to a small or discrete segment of society. This time the Commission used its Third Annual Report[8] as an avenue to discuss the case of Great Lakes Broadcasting. It was in that case that the Commission for the first time outlined the items it would consider in reviewing renewal applications, including a listing of matters directly affecting program content:

> The emphasis is on the listening public... . In far as a program consists of discussion of public questions, public interest requires ample play for the free and fair competition of opposing views, and the commission believes that the principle applies not only to addresses by political candidates but to all discussion of issues of importance to the public... .
>
> There is no room for the operation of broadcasting stations exclusively by or in the private interests of individuals or groups so far as the nature of the programs is concerned. There is not room in the broadcast band for every school of thought, religious, political, social, and economic, each to have its separate broadcasting station, its mouthpiece in the ether. If franchises are extended to some it gives them an unfair advantage over others, and results in a corresponding cutting down of general public service stations. It favors the interests and desires of a portion of the listening public at the expense of the rest. Propaganda stations... are not consistent with the most beneficial sort of discussion of public questions. As a general rule, postulated on the laws of nature as well as on the standard of public interest, convenience, or necessity, particular doctrines, creeds, and beliefs must find their way into the market of ideas by the existing public-service stations, and if they are of sufficient importance to the listening public, the microphone will undoubtedly be available. If it is not, a well founded complaint will receive the careful consideration of the commission in its future action with reference to the station complained of.[9]

Within a few years after passage of the 1927 Act, Congress found it necessary to revisit communications law and policy (See p.37, supra). This led to the enactment of the Communications Act of 1934,[10] which while more expansive than the previous legislation, maintained the public interest, convenience, and necessity as the standard to be used in allocating frequencies and regulating their use. While the agency's name was changed, the Federal Communications

Commission followed precedent established by the FRC, and because of the perceived "scarcity" of broadcast outlets, continued to develop and enforce programming content regulations.

The United States Supreme Court did not directly confront the issue of whether a scarcity of outlets justified regulatory activity until 1943, when it decided the landmark case of National Broadcasting Co. v. United States.[11] In that case, the dominant radio networks challenged the authority of the FCC to adopt chain broadcasting rules, which the Commission deemed necessary in furtherance of its public interest standard, and explicitly to foster greater program diversity. The FCC's ownership restrictions were sustained over the objection that they consituted an unconstitutional intrusion and impingement upon licensees' right of free speech.

The rules at issue were the product of extensive regulatory study. Not long after passage of the Communications Act of 1934, the FCC initiated a comprehensive investigation to determine whether special regulations applicable to radio stations engaged in chain broadcasting were required in the "public interest, convenience, or necessity." During the next five years, the Commission received comments, held hearings, and deliberated the need for such regulation.

Based on its investigation, the Commission determined that by the end of 1938 there were 660 commercial radio stations in the United States, of which 341 were affiliated with national networks. It noted, however, that stations affiliated with national networks utilized more than 97 percent of the total nighttime broadcasting power of all stations in the country. The National Broadcasting System alone controlled 85 percent of total nighttime broadcasting signals. Despite recognition of the service which the network provided the American public,[12] the Commission was concerned that such concentration of power might adversely affect the ability of licensees to provide the requisite service to their areas of license. Of primary concern to the Commission were "exclusive affiliation" agreements by which networks could restrict affiliated licensees from broadcasting another network's programming.

The networks challenged the Commission's rules, eventually asking the Supreme Court to review the regulations in light of alleged First Amendment violations. The Court affirmed the Commission's rules and concluded that it was the scarcity of available channels which justified this action by the Commission. The Court specifically rejected the notion of the FCC as strictly a traffic officer, policing the airwaves to prevent stations from interfering with one another. The Court reasoned that because radio technology did not permit access to all who wished to broadcast, the Commission had the burden of determining the program composition.[13]

Two different concepts of scarcity were reflected in the Court's analysis. First was the problem of radio technology not being able to provide as many outlets as there are people wishing to broadcast. A second form of perceived scarcity entailed the inability of the public to receive as many voices or ideas as it may wish. To the extent that these two forces are at odds, the Court concluded that "[the] 'public interest' to be served under the Communications Act is thus the interest of the listening public in 'the larger and more effective use of radio.' §303(g)."[14]

Inherent in the Commission's lengthy investigation of chain broadcasting and the Court's ruling in NBC was the assumption that chain broadcasting agreements limited the number of options available to listeners, and that the force or impact of the licensed stations as strengthened by their uncontested omnipresence in American households. The Commission's investigation disclosed that the two networks, through their agreements with local broadcast licensees, virtually controlled nighttime radio broadcasting. Not only was there a scarcity of outlets, which in turn limited the number of electronic media available to the public, but through independent agreements, those few channels were virtually speaking with but two voices.

Neither the Court's majority nor the Commission directly addressed the issue of the alleged dominance of the networks over the flow of news and information to their audiences. Justice Murphy's dissenting opinion in NBC, while construing the Communications Act more restrictively than the majority, observed that "[in] the dissemination of information and opinion, radio has assumed a position of commanding importance, rivaling the press and the pulpit."[15]

NBC did not involve the content of any program per se. Unlike other cases to be discussed below, the Commission and the Court were not faced with Fairness Doctrine obligations, personal attack rules, the equal time provisions of the political broadcasting rules, or other regulations directly affecting content. For the first time, however, the Court clearly established a nexus between "scarcity" of outlets available for radio broadcasting and the legitimacy of regulations directly or indirectly affecting program content.

It would be another quarter of a century before the Supreme Court would be asked again to determine the extent to which the First Amendment protects broadcasters against regulations affecting content. Prior to that, however, the FCC was to institute special requirements on the broadcast media based on the scarcity rationale.

In 1949, the FCC issued a Report on Editorializing by Broadcast Licensees,[16] which spelled out for broadcasters a two-fold obligation: (1) to give adequate coverage to issues of public importance; and, (2) to ensure that such coverage accurately reflect opposing views. Neither obligation was a new pronouncement. The Commission's Report merely summarized and fully explained the "Fairness Doctrine" obligations more completely than in previous declarations.

There has long been dispute as to whether the Fairness Doctrine is statutorily or, indeed, constitutionally mandated. It suffices to say that it had its genesis in Commission rulings and discussions of a broadcaster's obligation, again, to serve the "public interest, convenience, and necessity."[17] However, in 1959 Congress, implicitly accorded the Fairness Doctrine its imprimatur when it amended Section 315 of the Communications Act to exempt appearances made by political candidates on bona fide news programs. In so doing, the Congress stated that the news program exemption did not constitute an exemption "from the obligation imposed upon them [broadcasters] under this Act to operate in the public interest and to afford reasonable opportunity for discussion of conflicting views on issues of public importance."[18] Inclusion of this language vindicated the FCC's position that the Fairness Doctrine was an aspect of the Section 303 obligation to serve in the "public interest, convenience and necessity."

In 1969 the Supreme Court for the first time reviewed FCC rules directly affecting content regulations. In Red Lion

Broadcasting v. FCC,[19] the Court reviewed the legitimacy of the Fairness Doctrine and its offshoots, the personal attack and political editorializing rules.

The personal attack rule requires broadcasters to inform one whose honesty, character, integrity or like personal qualities has been impugned, during the presentation of views on a controversial issue of public importance, of the attack, to provide a transcript, and give an opportunity to respond. The political editorializing rule provides that when a licensee endorses a political candidate, opponents must be given an opportunity to respond. Likewise, when a licensee opposes a political candidate, he or she must be given a reasonable opportunity to respond.

In 1968, the Commission issued new rules more fully articulating its requirements regarding personal attacks and political editorializing,[20] and the Radio and Television News Director's Association (RTNDA) filed suit challenging the action before the Seventh Circuit. The Court of Appeals agreed with the petitioners, and ruling that the Commission's rules abridged rights guaranteed by the First Amendment. The Commission appealed the decision to the Supreme Court.

In an unrelated proceeding, Red Lion Broadcasting Company, the licensee of WGCB in Red Lion, Pennsylvania, sought review of an FCC Order holding the company in violation of the Fairness Doctrine. Red Lion Broadcasting had refused to provide an opportunity to reply to the author of a book who had been personally attacked during a broadcast by the Reverend Billy James Hargis. On review, the Court of Appeals for the District of Columbia Circuit upheld the constitutionality of the FCC's action. Red Lion Broadcasting appealed to the Supreme Court.

The U.S. Supreme Court considered both cases simultaneously. It found the FCC's action in both cases valid and constitutional since the rules in question "enhance rather than abridge First Amendment protections."[21] At the heart of the Court's analysis in Red Lion is the notion that the scarcity of available frequencies require and justify government regulation.

The Court reasoned that "it is idle to posit an unabridgeable First Amendment right to broadcast comparable to the right of every individual to speak, write or publish."[22] Rather the Court viewed the licensee as a "proxy or fiduciary" of those in the community who, but for the limited nature of the medium, might use broadcasting as a means of expressing their views. Contrasting the rights of broadcasters to those viewers and listeners, the Court declared "[i]t is the right of viewers and listeners, not the right of broadcasters, which is paramount."[23] This idea harkens back to the belief that the primary purpose of the First Amendment was to encourage vigorous and robust debate, that is, "to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail."[24]

In contrast with Red Lion, the Court has been unwilling to uphold comparable right-to-reply requirements involving newspapers. Only five years after the Red Lion decision, the Court in Miami Herald Publishing Co. v. Tornillo[25] reversed a Florida Supreme Court decision upholding the constitutionality of a Florida statute which sought to provide political candidates a right to reply to newspapers attacks against them. Without referencing to Red Lion's solid line, the majority upheld the editorial rights of newspaper publishers:

> The choice of material to go into a newspaper, and the decisions made as to limitations on the size and content of the paper, and the treatment of public issues and public officials - whether fair or unfair - constitute the exercise of editorial control and judgment. It has yet to be demonstrated how governmental regulation of this crucial process can be excercised consistent with First Amendment guarantees of a free press as they have evolved to this time.[26]

In 1977 the Supreme Court again reviewed an FCC decision involving broadcasters' First Amendment rights. The FCC had adopted regulations prospectively barring the initial licensing or the transfer of newspaper-broadcast combinations where there is common ownership of a radio or television broadcast station and a daily newspaper located in the same community.[27] The Court upheld the regulations in their entirety, despite claims that they violated First Amendment rights of newspaper owners who may wish to enter the broadcasting field.[28] Referring to Red Lion, the Court dismissed this argument because it ". . . ignores the fundamental proposition that there is no 'unabridgeable First Amendment right to broadcast comparable to the right of every individual to speak, write, or publish.' "[29]

Again the Court reiterated the view that the physical limitations of the broadcast spectrum justify this conclusion. The Court reasoned that, given this assumed scarcity and the number of people presumably wishing to broadcast, Government intervention is essential, indeed, possibly required by the First Amendment.

NCCB, of course, could have been premised on antitrust grounds, since the FCC, like most other regulatory agencies, has broad authority to take steps promotive of economic competition.[30] The case was argued and briefed chiefly on First Amendment grounds, however, primarily because the FCC had held that diversity considerations alone warranted cross-ownership restrictions.

Conclusion

It is clear from the discussion above that the Supreme Court has been unwilling to deviate from its adherence to the scarcity rationale, despite its close observance of the First Amendment when dealing with the print media. In the next section collected data is presented on the number of print media outlets available in the United States throughout this century. Data was also gathered on the numbers of electronic media outlets. Even a cursory review of the data presents a clear picture in contrast to the Court's assumptions regarding scarcity. The scarcity, in relative terms, if it lies anywhere, lies in the field of print media, not in the electronic media.

Footnotes

[1] Interstate Commerce Act of February 4, 1887, Chapter 104, 24 Stat. 379 (1887), 49 U.S.C. §1(18).

[2] Conceivably, less spectrum could have been designated for other uses, permitting more radio stations to operate in a given community.

[3] Chicago Federation of Labor v. FRC, 3 F.R.C. 36 (1929).

[4] Chicago Federation of Labor v. FRC, 41 F.2d 422 (D.C. Cir. 1930).

[5] KFKB Broadcasting Ass'n v. FRC, 47 F.2d 670 (D.C. Cir. 1931).

[6] 47 F.2d at 671.

[7] Trinity Methodist Church, S. v. FRC, 62 F. 2d 850 (D.C. Cir.) cert. denied, 284 U.S. 685 (1932).

[8] Federal Radio Commission Third Annual Report 33 (1929).

[9] Id. at 34.

[10] Communications Act of 1934, 47 U.S.C. §§151 *et seq.*

[11] National Broadcasting Co. v. United States, 319 U.S. 190 (1943).

[12] The Commission recognized that the networks, with their vast resources (particularly as compared to the resources of individual licensees) made possible quality programming sustained by advertising revenues generated only by the appeal to large audiences.

[13] The Court briefly notes that it was the government which decided to use only a small segment of the available electromagnetic spectrum for radio broadcasting. To a certain extent the government is therefore responsible for the scarcity of radio outlets. *NBC* at 214.

[14] 319 U.S. at 216.

[15] *Id.* at 228, dissenting opinion.

[16] *Report on Editorializing by Broadcast Licensees*, 13 F.C.C. 1246 (1949).

[17] 47 U.S.C. §307(a).

[18] Public Law 86-274, approved 1959, 73 Stat. 557, amending 47 U.S.C. ¢315(a)

[19] Red Lion Broadcasting v. FCC, 395 U.S. 767 (1969).

[20] *Procedures in Event of Personal Attack or Where Station Editorializes as to Political Candidates*, 32 Fed. Reg. 11531 (1967).

[21] 395 U.S. at 375.

[22] 395 U.S. at 388.

[23] 395 U.S. at 390.

[24] *Id.*

[25] Miami Herald Publishing Co. v. Tornillo, 418 U.S. 241 (1974).

[26] 418 U.S. at 255.

[27] *Rules Relating to Multiple Ownership of Standard, FM, and Television Broadcast Stations, Second Report and Order*, 50 F.C.C. 2d 1046 (1975), *amended upon reconsideration*, 53 F.C.C. 2d 589 (1975).

[28] FCC v National Citizens Comm. For Broadcasting, 436 U.S. 775 (1978).

[29] 436 U.S. at 779.

[30] 436 U.S. at 800, ft. 18 [citations omitted]. *See also* United States v. Associated press, 326 U.S. 1 (1945).

SECTION IV: PRINT AND ELECTRONIC MEDIA: SCARCITY OR ABUNDANCE?

In the previous section, both the FCC and Supreme Court intepretations of and adherence to the scarcity rationale, that is, that the scarcity of electronic media outlets justifies content regulation were discussed. Here, the focus of inquiry is on a comparison between the number of print media outlets versus the number of electronic media outlets available at five year intervals, starting with 1928 (first year for which reliable data are available). In this section, the trends are charted, statistical data are compared, and their significance is analyzed.

All efforts have been taken to insure the statistical validity and evenhandedness of the charts, graphs, and text in this section. Because the data for different media are compiled and reported differently, various sources for the data reported in this section were relied upon. In Appendix B the various sources, as well as the collection methodology, are discussed in full.

For the purposes of this section, print media outlets have been defined as general interest, chiefly general circulation, daily newspapers. The electronic media outlets surveyed are AM and FM radio and UHF and VHF television stations. Cable television systems were not included as their growth has been primarily concentrated in the recent past, hence making comparisons with the print media difficult. However, the importance of new technologies and the impact they are likely to have in the way Americans receive news, information, and entertainment in the years to come is recognized. Section V of this paper discusses the various new technologies, their probable growth, and related legal and regulatory issues.

The first part of this section will describe the frequency of newspaper publishing at the time of the American Revolution. The next section focuses on daily newspaper publishing in the 20th century. The third part of this section maps the patterns of radio and television growth in the 20th century. The final section will compare the statistics on the print media and electronic media, and derive from these comparisons conclusions as to each industry's growth, scarcity, accessibility, and potential for diversity. The goal is to prove that scarcity, both numerically and by concentration, lies not with the electronic media but with the print media.

In this section, only data for the entire United States is presented, instead of breaking those data down by markets or cities. Total figures serve adequately for the purposes of this analysis, and thus are included here. However, in order to fully validate these findings, data are also collected for 25 separate U.S. communities starting with the year 1928, then

1934, then 1940, and every five years thereafter, ending with 1980. These additional findings and illustrative graphs and charts are contained in Appendix B of this paper. In addition, all raw data gathered is presented in Appendix B.

Print Media at the Time of the Framers

To properly understand the minds of the authors and ratifiers of the Bill of Rights, it is important to place oneself in the historical context in which they found themselves. In 1770 there were 29 newspapers publishing weekly, semiweekly or triweekly in the American colonies;[1] in 1780 there were 39.[2] The first daily newspaper in America began in 1783, and by 1790 there were eight dailies and eight weeklies,[3] six of which lasted through the year.[4] "Only 20 of the 35 newspapers being published at the beginning of the war survived. . . and 35 new papers were established during the six years of fighting."[5] Between 1790-1800 the number of newspapers increased from 92 to 235; in all, 450 newspapers were started in the period 1783-1801.[6] The newspaper printing business differed greatly from the modern mass circulation dailies of today.

> Communications technologies dominated by significant scale economies at relevant output levels were unknown to the framers of the First Amendment. In their experience, economic competition was consistent with the political function of the press because of the small scale technology of printing and the rapid rate of entry in the industry in the decade preceeding 1791. It

> is impossible to answer the question whether these men would have acted differently if they had been faced with a media structure such as we have today. One can say, however, that they had not the slightest notion of a 'responsible' or balanced or fair press. Their experience was with a highly partisan press, but one in which there was great accessibility to the means of reaching the public with new idea. No one thought of legislating a 'right of access' to the pages of newspapers, at least in part because of the relative ease of access to the presses themselves.[7]

Even given the relatively few number of printers in the new republic, the First Amendment made it clear that Congress should have no authority to interfere with the press.

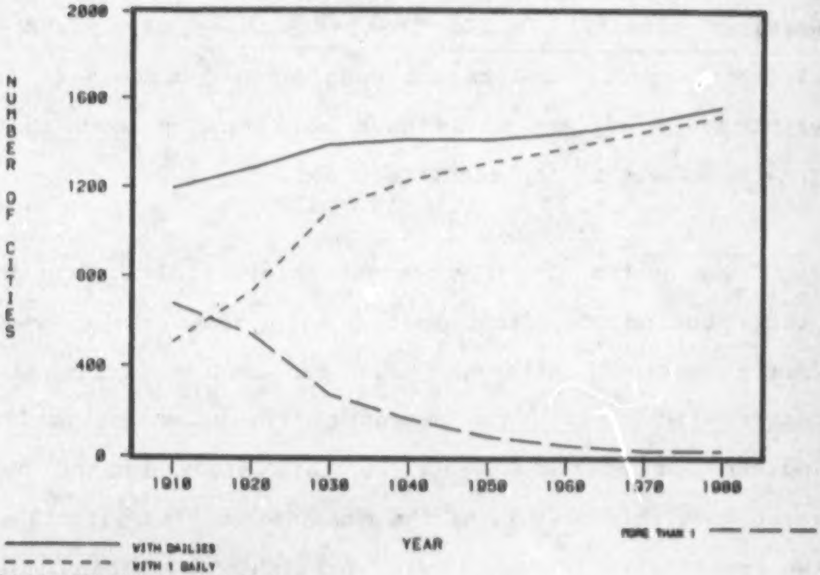
Print Media in the Twentieth Century

In the 20th century, electronic media rival the print media in the dissemination of news and information to the American public. It is ironic, however, that while the electronic media outlets are considered "scarce," it is the print media outlets which have not kept up with the fast growth pattern of the electronic media.

The number of daily newspapers available in the United States during the first half of the 20th century remained fairly constant, although there has been a decline in the number since 1945. The aspect of the newspaper publishing industry of most relevance to this study is the decline throughout this century of the number of cities with less than two competitive daily newspaper publishing companies. Graphs I and II on page 67 and 68 clearly display this phenomenon.

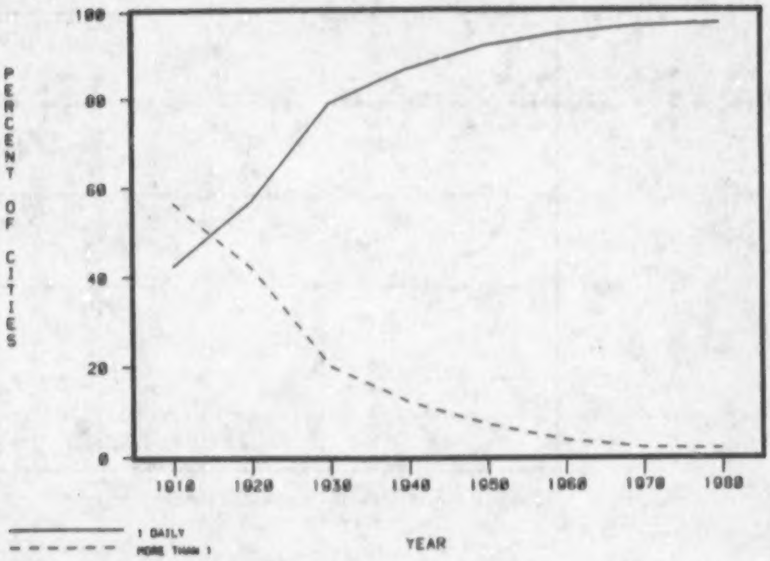
In 1920, 2,042 daily newspapers were published in 1,295 cities. Of those cities, 43. percent had two or more competitive dailies. Even at that early date, 57 percent were already monopoly, or one publishing firm, cities. By 1976 the number of daily papers had dropped to 1,762 located in 1,550 cities. Cities with truly competitive newspapers accounted for only 2.5 percent of the total. In other words, by 1976 97.5 percent of the daily newspapers published in America were in cities or towns with only one publishing firm. It must be recognized that concomitant with the demise of big city dailies, there has been a growth of suburban dailies, which has kept the total number of daily papers amazingly constant since 1945.

GRAPH I
NEWSPAPER SERVICE



Sources: Data derived from: [illegible]

GRAPH II
NEWSPAPER SERVICE



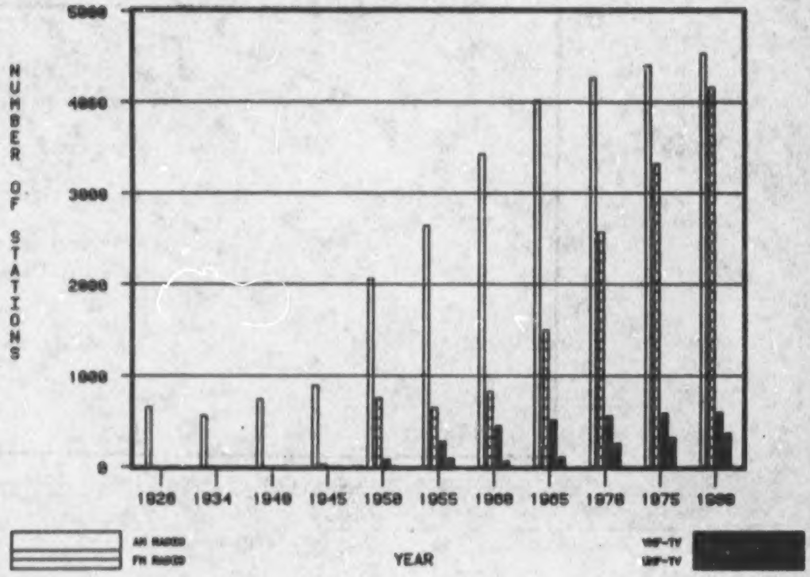
Sources: Data derived from: Editor and Publisher International Yearbooks, [illegible]

Electronic Media

The history of the electronic media has been characterized with rapid growth limited only by its technology. In graphs III and IV, the development and growth of AM and FM radio, and VHF and UHF television are traced. Although AM radio developed at a fairly constant rate from 1928 to 1945, since then it and the other electronic media have grown exponentially. By 1980 the number of radio stations (AM and FM) on the the air had reached 9,150 and television stations (VHF and UHF) totaled 1,050. Graph III on page 70 charts this growth very clearly.

GRAPH III

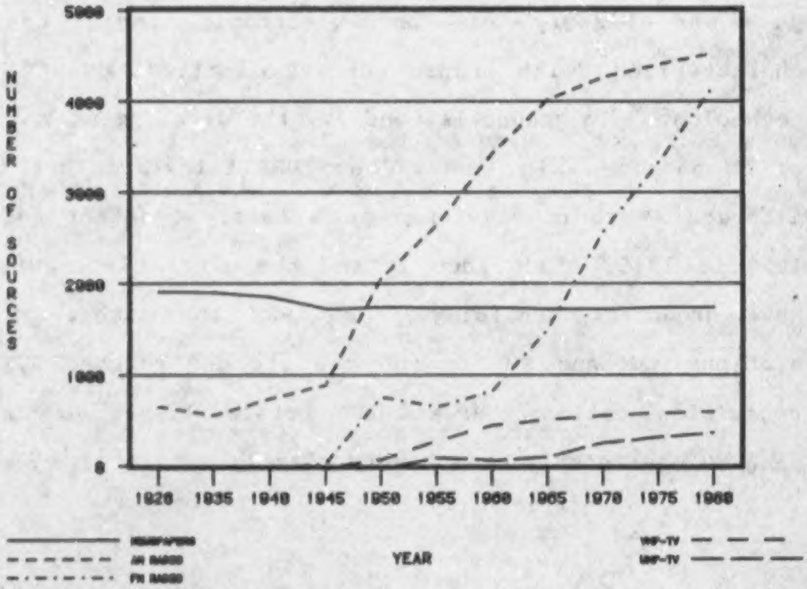
ELECTRONIC MEDIA



Source: Data derived from: Broadcasting and Cable Yearbook 1981 and Sterling, The Mass Media Aspen Institute Guide to Communications Industry Trends.

GRAPH IV

MEDIA DISTRIBUTION



Source: Data derived from: Broadcasting and Cable Yearbook 1981 and Sterling, The Mass Media Aspen Institute Guide to Communications Industry Trends.

Media Comparisons

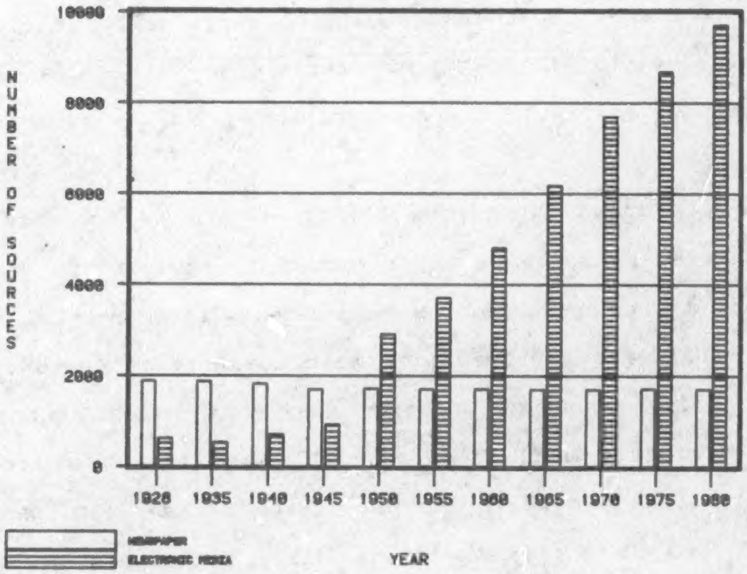
Graphs V, VI, and VII demonstrate the relative competitiveness of the electronic versus the print media. By 1976 over half of the American communities received eight or more television channels, whereas only 2.5 percent of American cities with daily newspapers have more than one newspaper publishing company. In other words, by 1976 only 2.5 percent of American cities had two or more competitive daily newspapers. There are now over 9,150 radio stations and over 1,050 television stations on the air, compared with less than 1,800 daily newspapers. Graph V on page 74 clearly displays the continual growth and numerical superiority of electronic media outlets in the United States today, as compared to the number of available daily newspapers.

In graph IV on page 71, growth curves for each of the four electronic media are compared to newspapers. While it appears that newspapers outnumber television in total numbers, in a different perspective, most communities receiving only one daily newspaper receive more than eight channels of televisions. Graph VI on page 75 shows this phenomenon well, indicating that while the percentage of American communities with two or more competitive daily newspapers has dropped slowly over the years, the percentage of cities with multiple channels of television has grown exponentially.

Clearly, the growth of television and radio in the last two decades has greatly enhanced the numerical superiority of the electronic media. The data assembled for the 25 individual markets analyzed and discussed in Appendix B further discloses that regardless of the region or population of those communities, growth patterns for the electronic media have remained constant throughout the United States. Likewise, the reduction in the number of competitive daily newspapers can be seen in each of those cities. See Graphs VIII - XI in Appendix B.

GRAPH V

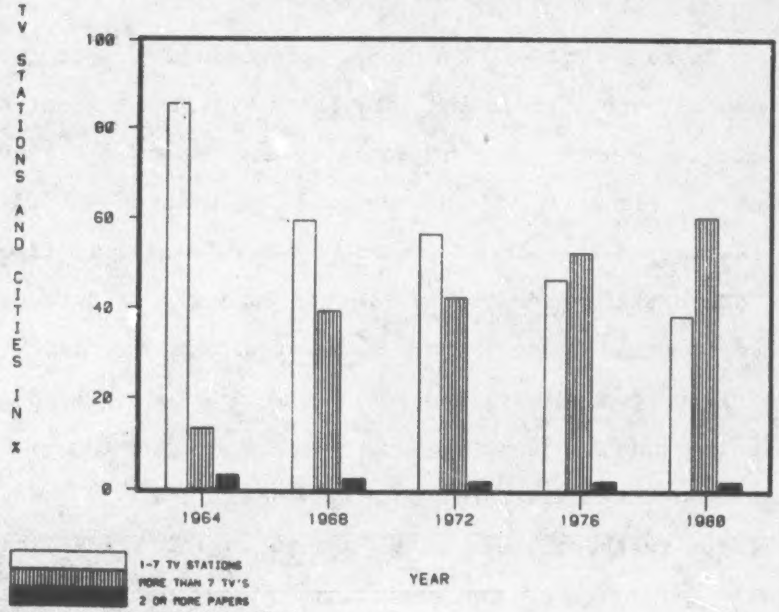
MEDIA DISTRIBUTION



Sources: Data derived from: Broadcasting and Cable Yearbook 1991 and Sterling, The Mass Media Aspen Institute Guide to Communications Industry Trends.

GRAPH VI

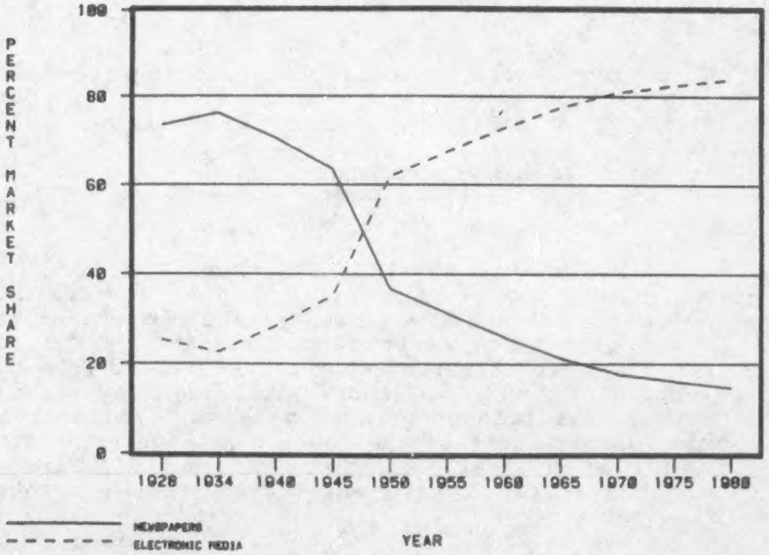
MEDIA AVAILABILITY



Sources: Data derived from: *Broadcasting and Cable Yearbook 1981* and Sterling, *The Mass Media Aspen Institute Guide to Communications Industry Trends*. (percentages computed by authors)

GRAPH VII

MEDIA MARKET SHARE



Sources: Data derived from: *Broadcasting and Cable Yearbook 1981* and Sterling, *The Mass Media Aspen Institute Guide to Communications Industry Trends*. (percentages computed by authors)

Conclusion

These figures in the preceding graphs clearly demonstrate that radio and television stations are not scarce, particularly when compared to daily newspapers. Clearly, the spectrum resource is unlike gold or uranium or oil when characterized as scarce. If it is scarce at all it is only in the sense that a receiver's limited capacity to differentiate between modulations. The spectrum itself is not scarce: only the historic handicaps and limited allocations placed upon it make it scarce.[8] The range of useable frequencies has risen from 1 mhz in 1912 to more than 40,000 mhz now.[9] As technology develops further, it is difficult to envision any limitation on the expansion of the use of the electromagnetic spectrum. Graph VII on page 79 displays the relative market shares of electronic and print media since 1928. There is no doubt as to which medium maintains the numerical superiority.

What then is the rationale for granting freedom of the press to the print media, but not to the electronic media? As recently noted by a commentator:

> Clearly, the physical resources that go into the production of the print media -- newsprint, presses, distribution trucks, and so on -- are scarce, and hence their owners charge a price for them. It often asserted that print differs from the electronic media in that virtually anyone can prepare a written or printed message. While true, this ignores the fact that once a message is printed it must be physically transported from the publisher to the readers to have any effect. Thus printed

> communications are as dependent upon channels of *transportation* as radio communications are dependent upon electromagnetic channels. Both kinds of channels are scarce, and for exactly the same reasons: It is costly to build a road or fly an airplane from point A to point B and costly to send a bundle of newspapers on that road or plane, just as it is costly to establish a radio channel and transmit information electronically. Scarcity as reflected in the *price* of transportation excludes some people from access to printed communications just as scarcity in radio channels excludes some transmitters in favor of others. Indeed, the rising price of energy and other raw materials make the distribution of printed matter more expensive and less accessible to the public than telecommunication, the price of which is rapidly falling.[10]

Each communication medium has its pecularities of historical and industrial context. The print media in America developed at a time when news two months old was still considered fresh. It took weeks for the signing of the Constitution to be reported in all the former colonies, let alone disseminated. The Founding Fathers rebelled against an authority that allocated, regulated, and tried to intimidate the media.

During the infancy of telecommunication, the Federal government licensed and defined the proper usage of the electromagnetic spectrum. Childhood and adolescence now past, is it not time the restrictive hand of government be removed?

Footnotes

[1] Owen, Bruce, Economics and Freedom of Expression, at 64 (1975).

[2] *Id.* at 64.

[3] *Id.* at 6.

[4] *Id.* at 64.

[5] Emery, Edwin & Michael, The Press and America, at 69 (1972).

[6] Owen at 43.

[7] *Id.* at 44.

[8] M. Mueller. Property Rights in Radio Communication: The Key to Reform of Telecommunications, (1982) at 9.

[9] *Id.* at 10.

[10] *Id.* at 11.

SECTION V: NEW TECHNOLOGIES: ABUNDANCE OF ELECTRONIC MEDIA OUTLETS

In previous sections, discussion of electronic media was limited to television and radio, avoiding discussion of the new, emerging technologies for several reasons. Data and information about radio and television are readily available, facilitating comparisons with similar data available for the print media. Also, the regulatory constraints upon radio and television are a known quantity, while the rules and regulations which may constrain or enhance the development of "new media" (e.g., cable television, DBS, MDS) are still evolving. Thus, the focus until now has been on traditional broadcasting services subject to established content regulations.

Any inquiry into the actual or perceived "scarcity" of electronic media must take the "new media" into account. Contemporary technology affords numerous methods of providing service and service options to the American people. In addition to the already discussed options of AM and FM radio, and VHF and UHF television, emerging technologies of cable television, multipoint distribution systems (MDS), satellite master antenna television (SMATV), video discs and cassettes, and direct broadcast satellites (DBS) soon will become viable media service options. Consumers ordinarily are indifferent to the technology employed to provide them with news, information, and entertainment options. What is important from a public policy standpoint, moreover, is not how options are expanded but rather the fact that these new communications options have increased substantially.

Any objective review of the communications field today will clearly show an explosion in the number of new video, audio, print and blended technologies which reach significant numbers of the American public today. The discussion which follows will define these new technologies and forecast the impact each will have in the telecommunications arena in the years to come. Already the developments in telecommunications offer a vast array of outlets for disseminating information. Given these developments and those to come, the electronic media can no longer be considered scarce, in relative or absolute terms, particularly when compared to the decline in competitive daily newspapers.

Cable Antenna Television Systems

The first of the communications "hybrids," cable television began initial operations in 1949. It provides television programming through the conventional transmission medium of common carriage, a wire. For more than 20 years, cable's role consisted almost exclusively of improving viewer reception of over-the-air television. Systems today, however, not only retransmit broadcast television, but also originate programming and provide a variety of specialized services such as home theft and fire protection, home banking, etc.

Cable systems now serve 35 percent of the television households in the United States, and the business is growing at a rate of 400,000 net subscribers per month. Industry predictions are that, by year's end, 37 percent of all television homes will be wired for basic services (in some urban areas this will include a 120 channel capacity), while 22 percent will subscribe to pay services (such as Home Box Office and Cinemax). Thus about 25 million consumers will be cable subscribers by the end of 1983. At the end of this decade, predictions are that 62 percent of all television homes will be wired, and that pay service subscriptions will be 46 percent.

Furthermore, cable programming networks are expanding rapidly. Cable News Network (CNN) subscribers are up 68 percent in the past year, to 15.2 million; Home Box Office (HBO) now has 10 million subscribers; the Entertainment Sports Programming Network has 18.7 million subscribers; and, new on the scene, Music Television is up to 6.7 million subscribers. While not all such business ventures (e.g., CBS Cable) are successful, various different outlets are being developed for cable programming. There is now a Spanish language network (SIN); health, women's, weather, and religious networks; and a multitude of competing movie networks. Additionally, most cable franchises require several public access channels on which members of the general public can produce and show programs. The specialized communications needs of businesses are also being served by cable system wiring of cities with "I-Nets" (industrial networks). Newer cable systems also may permit the offering of high-definition television. The cable horizon is indeed bright.

[Sources: New Technologies Affecting Radio and Television Broadcasting; Senate Com. on Commerce, Science & Transport., Hearings on Freedom of Expression, 9/28/82 (statement of Dr. Charles Shooshan); Jackson, Shooshan & Wilson, Newspapers and Videotex: How Free a Press?; and 1983 Industrial Outlook.]

Direct Broadcast Satellites (DBS)

Existing communications satellites generally "wheel" programs nationwide to cable television systems which then distribute the signals locally via coaxial cable. Some 5,000 homes are now equipped with earth stations, and can thus receive satellite transmissions directly. The term "DBS," however, ordinarily refers to a new generation of high-powered satellites capable of sending signals directly to inexpensive receivers, thus permitting widespread direct-to-home broadcasting of programming meant for a large, regionally varied audience.

Possibilities for the use of DBS are diverse: multi-channel subscription television service, development of high-definition television service (HDTV), distribution for cable, MDS, and low-power television (LPTV), and the provision of videotex services, to name only a few.

By 1992, six DBS channels should be available, and an achievable number of 25 channels is forecast. Using a set of four geostationary satellites, with focused directional beams, virtually anyone could be reached by DBS, even in the most remote and rural areas. Cable systems are not usually wired in such areas due to the fact that the costs of wiring outweighs the benefits of service to a relatively small number of people. DBS provides an economical and efficient means of providing service to these areas.

[Sources: New Technologies Affecting Radio & Television Broadcasting; Stone, G., and Cohen N., "DBS Platforms: A Viable Solution," and Reinhart, E., "Three is Not Enough: Why the U.S. Specified Four DBS Service Areas," Satellite Communications, Vo. 6, No. 13 (Dec., 1982); Senate Com. on Commerce, Science & Transportation, Hearings on Freedom of Expression, 9/28/82 (statements of Dr. Solomon Buchsbaum and Dr. Charles Jackson); Jackson, Shooshan & Wilson, Newspapers and Videotex: How Free A Press?]

Satellite Master Antenna Systems (SMATV)

SMATV systems differ from cable systems as they operate on private property, such as multiple unit dwellings and hospitals. The individual homes are wired with cable, which is connected to an earth station. Ordinarily the operator deals directly with the property owner, and he need not obtain a franchise. This approach frees the operator from both municipal and federal regulation. In effect, SMATV is the middle ground between the mass cable systems, covering entire townships and municipalities, and the direct-to-home broadcast satellite concept (DBS).

The growth of this technology is impossible to predict accurately. Should current FCC rules continue in effect, however, the absence of restrictions may provide some impetus to expansion over the next decade.
[Source: Broadcasting, 1/3/83.]

Multipoint Distribution Services (MDS)

Regulated as a common carrier, MDS utilizes omnidirectional microwave signals (2 GHz band) to transmit either video or other services to subscribers. Customer antennas must be in line-of-sight to the transmitter, and current FCC rules only allow one channel to each operator (with two channels per market).

The FCC has proposed reallocation of the 31 MDS video channels. The 28 channels now assigned Instructional Television Fixed Service (ITFS) exclusively are to be reduced to 11. MDS operators are proposing that they receive 14 channels in each of the nation's top 50 markets which, in turn, would be divided among three MDS operators. Nationally, there were 200 MDS channels in use in 1982. Predictions are that this number will increase to at least 2,000 in ten years. [Sources: New Technologies Affecting Radio and Television Broadcasting; Senate Com. on Commerce, Science & Transportation, Hearings on Freedom of Expression, 9/28/82 (statement of Dr. Charles Jackson); Broadcasting, 1/3/83; Jackson, Shooshan & Wilson, Newspapers & Videotex: How Free a Press?]

Low Power Television (LPTV)

Low-power television (LPTV) originated as small broadcast transmitters, known as "translators," which rebroadcast signals from full-service television stations. Primarily, LPTV served rural areas which were inaccessible to those signals. In 1982, the FCC significantly enhanced the potential of LPTV by allowing the rebroadcasting translators to become stations in their own right: originating programming and selling advertising or subscription services. FCC estimates were that 4,000 new stations would emerge in addition to the 4,000 existing translators able to qualify for LPTV station status. Limited to 1,000 watts for UHF and 10 watts for VHF, the LPTV stations may not interfere with full-power stations, and their broadcasts can only be received within narrowly defined geographic areas.

The FCC was initially overwhelmed by LPTV applications, requiring the imposition of a processing freeze in 1981. By late 1982, 150 stations had been licensed and 178 construction permits had been issued. Pending applications number 7,983. At present, 4,386 traditional translators are licensed, and 866 construction permits issued. Predictions are that by 1992 there will be a thirteen-fold increase in stations to number 2,000.

While the ultimate success of LPTV depends upon marketing, timing of entry, and the relative successes of alternate technologies like SMATV, MDS, and cable, it has the potential to expand the number of available channels and increase the diversity of viewpoints offered to the public (if the number of pending applications is any indication). Ten or more LPTV channels have been applied for in 86 percent of the top fifty markets. Stations located in high density urban areas could reach substantial numbers of the public, and vastly supplement the media outlets already available. [Sources: New Technologies Affecting Radio and Television Broadcasting; Broadcasting, 1/3/83.]

Fiber Optics Technology

Fiber optics technology, now being used on a limited basis on a small scale, is both the most sophisticated transmission technique and the one likely to have substantial impact late in this century. Silicon dioxide-sand is transformed into a thread capable of bearing vast numbers of voice and video channels in the form of encoded light waves. In terms of cost efficiencies, capacity, and convenience, fiber optics far exceeds the twisted wire or coaxial cable technologies. At the same time, these threads cannot be tapped nor pirated; tampering destroys the transmission itself. (For this reason, fiber optics is preferred by the military for sensitive communications.)

Current fiber optic technology is prohibitively expensive for anything but trunk line usage, primarily by the telephone industry. The problem exists at transmission and reception points, where the messages must be converted from electronic signals into light messages and then reconverted into the original electronic form. Once this obstacle is overcome, fiber optics could become the most valuable means of transmission available, eclipsing the cable industry in both cost-per-channel and security. When the telephone companies "rewire" the nation's telephone network, replacing antiquated lines with fiber optical threads at the end of the century, the potential uses of the vast capacity of this technology will become self-evident: anyone with a telephone would have access to virtually countless channels.

[Sources: Senate Com. on Commerce, Science & Transportation, Hearings on Freedom of Expression, 9/28/82 (statement of Dr. Solomon Buchsbaum); Dr. Robert Pepper, Office of Policy Analysis and Development, NTIA, Interview on 1/26/83.]

Teletext and Videotex

Teletext is a one-way electronic publishing service which typically may be transmitted using the vertical blanking intervals associated with standard television signals. It allows users immediate access to a wide variety of information which can be instantly updated. Cable operators have taken the lead in the offering of these services commercially, although some broadcasters have experimented with teletext. The FCC is expected to authorize broadcasters to offer the service in 1983.

Videotex, in contrast, is more technologically sophisticated. It is a two-way interactive service using either two-way cable or telephone lines. A television screen is connected to a central computer from which information may be retrieved and transactions conducted. Videotex, while more expensive, is potentially more useful and versatile than teletext.

Preliminary findings in test markets indicate that there is public demand for teletext and videotex services. As a mixed media combining written language with electronic transmission, these technologies possess the advantages of both broadcasting and publishing. Adapters can be affixed to standard television sets, and cable or telephone links can be established for videotex services on existing home computers.

The demand for complete in-home information access is high in some markets (as the personal computer boom illustrates), and the number of users should dramatically increase as services multiply and costs are reduced.

By incorporating aspects of both electronic and print media, videotex and teletext technologies, like the "electronic newspapers" (like U.S.A. Today, whose text is transmitted via satellite, and then printed on local presses) illustrate the artificiality of the court and administratively-drawn distinctions between print and electronic media. These technologies especially show the need for, and propriety of, expanded First Amendment rights for the electronic media; otherwise, the courts and the FCC may find themselves transgressing on protected First Amendment rights in trying to deal with the blended media.
[Sources: New Technologies affecting Radio and Television Broadcasting; Senate Com. on Commerce, Science Transportation, Hearings on Freedom of Expression, 9/28/82 (statement of Harry Smith); Broadcasting, 1/3/83; Jackson, Shooshan & Wilson, Newpapers and Videotex: How Free a Press?]

New Media: Projections

It is difficult to project with a high degree of accuracy growth patterns for new and developing technologies. However, a major telecommunications firm has recently released the results of a survey conducted by its consultant, Alan Pearce, Ph.D., analyzing the projected availability and use of electronic media for the remainder of this decade. The figures which appear on the next two pages were taken from a graph included in Volume I of "Comments of CBS Inc." in response to an FCC rulemaking procedure, "In the Matter of Amendment of the Syndication and Financial Interest Rule, 47 CFR § 73.658(j)," filed on January 26, 1983, pp. 54-55.

Availability and the Use of Electronic Mass Media (Millions): 1980 - 1990

	1980	1982	1986	1990
Number of TV Households	78	83	90	97
Basic Cable				
Homes with Access	35	45	75	82
Subscribers	19	28	41	58
Pay Cable				
Homes with Access	26	42*	70*	76*
Subscriptions	9	23	46	65
STV & MDS				
Homes with Access	22	35	49	59
Subcribers	1	3	6	8
Lower Power TV				
Homes with Access	--	NA	.4	10
Subscribers	--	NA	.36	.8
Direct Broadcast Satellite				
Homes with Access	--	--	72	97
Subscribers	--	--	2	11

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* In 1982, 93% of the television households passed by basic cable had access to at least one pay cable service. Assuming that the basic-to-pay ratio remains constant through 1990 (a conservative estimate given the anticipated expansion in channel capacities) pay cable will be available to 70 million households in 1986 and to 76 million households in 1990.

AVAILABILITY AND USE OF ELECTRONIC MASS MEDIA (MILLIONS): 1980-1990

	1980	1982	1986	1990
Videocassette Recorders				
Homes with Access	78	83	90	97
Owners	2	5	13	15
Videodisc Players				
Homes with Access	78	83	90	97
Owners	.02	.3	3	7
Videogames				
Homes with Access	78	83	90	97
Owners	11	15	22	29

Sources: Donaldson, Lufkin & Jenrette, *Industry Viewpoint: Cable '82* at 7, 9, 35 (Oct. 1982); Paul Kagan Assocs., Inc., *Cable TV Databook* 36, 51 (1982); Media Science Newsletter, June 1-15, 1982, at 2; Doyle Dane Bernbach, Inc., *The Media Scene: What Will It Look Like?* 11 (1982); Television Digest, Inc., *Television Factbook*, Services Vol., at 79-a, 83-a (1981-82 Ed.); Titsch Publishing, Inc., *Cablefile* 93 (1982); Paul Kagan Assocs., Inc. *MDS Databook* 13 (Oct. 1982).

Table prepared for CBS Inc., by Alan Pearce, Ph.D., January 18, 1983.

Conclusion

Courts, regulators, and legislators seeking to uphold government regulation of the content of broadcasting have struggled mightily somehow to distinguish broadcasting from publishing: a televised campaign commercial from a printed appeal for votes; a radio talk show treatment of a controversy from a magazine. The courts have totally ignored the issue, and have merely assumed sufficient differences to allow retreat from a fundamental principle of our Nation. Technology is now blending these media, which should moot all previous distinctions and force reconsideration of traditional policies toward all governmental regulation of the electronic media.

CONCLUSION

"The Congress shall make no law . . . abridging freedom of speech, and of the press . . . ." Throughout the history of our country we have jealously guarded this most sacred freedom. The print media have enjoyed this protection to an especial degree, probably due to the fact that print was the only means of mass communications at the time the First Amendment was enacted. The electronic media, however, a relative late comer, have not been protected to the same degree.

As has been explored in this paper, when the electronic media first emerged as a viable means of communication in the form of radio, all branches of the government (legislative, judicial, and executive) were unsure of how to deal with its unknown propensities. Congress was concerned with the importance of protecting the expression of different points of view. Due to the perceived finite qualities of the spectrum, which was thought to limit the number of channels available for full and open discussion of issues of public importance, the government allocated and licensed its use. However, the notion of spectrum as a scarce resource is no longer valid, if it ever was.

The fractionalization of the communications system on the basis of the method of transmission, today, is wholly inappropriate. The concern of the government that there be a "marketplace of ideas" is met by the virtual cornucopia of communications media: electronic, print, and hybrid.

Indeed, the public has a great number of choices of outlets and opportunities to hear diverse viewpoints from various voices. Modern communications technologies are astounding. There are daily, weekly, and monthly printed publications; VHF & UHF television, LPTV, MDS, STV, cable TV, AM & FM radio, MDTV, DBS, and others to be developed in the foreseeable future. Distinctions between print and electronic media may no longer be appropriate, from a technological or policy perspective.

Furthermore, hybrid technologies are emerging that include attributes of both electronic and print media. Many publications (e.g., USA TODAY and The Wall Street Journal) are delivered on newsprint to the consumers, but first are transmitted electronically to various printing presses across the country. Are these publications subject to regulation because they make use of the electromagnetic spectrum in the production of their product? The inverse also exists. The technologies of videotex and teletext transmit the printed word via electronic impulses, so that newspapers which have traditionally been delivered on newsprint appear on a video screen. If editorials appear in the teletext version of a newspaper, should they be subject to content regulation?

Today's technology has so expanded the number of outlets and hence the opportunity for a number of ways to get one's ideas, thoughts and beliefs across that no formalized distinctions based only on the method or means used to communicate can equitably or constitutionally be imposed. The First Amendment remains at the core of our system of government. The framers of our Constitution enacted the First Amendment to guarantee against the suppression of ideas, for only through full and open discussion does truth emerge. It is time that the electronic, print, and blended media become equal partners in the free marketplace of ideas upon which our society is based.

APPENDIX A

City/Market Selection Methodology

Section IV of this paper discusses the growth or decline of general interest, general circulation daily newspapers (which are described as print media outlets), and compares it with the growth or decline of AM and FM radio outlets, and VHF and UHF television (electronic media outlets). The graphs and discussion in Section IV are limited to nationwide figures for each medium at approximately five year intervals.

To ensure valid analysis and comparisons, data was also gathered for 25 individuals communities. The growth and development of the various media in those communities was then compared. The first ten locations selected, called Group Z, are the cities with the highest population figures for each of the years analyzed. These population figures represent the U.S. Census Bureau data for the jurisdictional city lines and should not be confused with S.M.S.A.s (Standard Metropolitan Statistical Areas), nor with the population figures for the appropriate market of impact (i.e., newspaper circulation area, broadcast coverage zone, etc.) Due to population shifts, there is some fluctuation between the particular cities which are included in Group Z from decennial to decennial.

The last fifteen locations are based upon the 1981-1982 Arbitron Television Markets and Rankings Guide, as published in the 1982-1983 Edition of TV & Cable Factbook. This is not a jurisdictional population ranking, but rather an ordering based upon television markets. This method was utilized because of the availability of data in this form. The ranking allows the selection of markets which reflect divergent populations and regions of the country.

These fifteen markets were chosen as follows: Group A was to come from markets in the 51-100 range; Group B was to come from markets in the 101-150 range; and Group C was to to be composed of markets from the 151-200 range. To determine which cities were to be used, each market group was divided into five geographic zones. Then, using a table of random numbers, five cities were selected from each market, trying to ensure geographical and population diversity. Data and graphs from Groups Z, A, B and C are found in Appendix B.

Print Media Data

The 18th century data for the print media are based upon two published books, Bruce Owen's Economics and Freedom of Expression, and Edwin & Michael Emery's work The Press and America.

Twentieth century data were culled from Editor and Publisher International Yearbooks. The figures for the U.S. totals are slightly higher than they would be if our specific criteria were utilized. (For example, there is a daily newspaper on Staten Island in New York City which is included in the daily U.S. total, but not counted for the N.Y. market because it is not generally available in any other boroughs.) General interest news magazines were not included in this survey because they are equally available everywhere through the Postal Service. Weekly, biweekly, and triweekly newspaper figures are not shown for the U.S. because they generally are not of broad interest, nor do they typically report more than local news. Certainly, there must be notable exceptions, but determining those would require an individual examination of each newspaper, which was not attempted here.

Radio Data

The number of radio stations operating in any particular year were taken from F.C.C. records as reported in Broadcasting and Cable Yearbook. The radio stations operating in particular locations are also taken from Broadcasting Yearbook, except for the 1928 data which is excerpted from the Report of the Federal Radio Commission, June 30, 1928.

Several cautionary notes need be made regarding radio data, which were gathered from Broadcasting and Cable Yearbook and FCC Reports. They both over and under report the availability of radio reception in the year of listing. The data for the early years are somewhat inflated because a number of stations shared frequencies by operating during different hours of the day. Thus the total number of stations potentially broadcasting at the same time is somewhat less then the figures reported. The exact number of stations sharing hours is noted for those locations. Also, during the 1950s and 60s, many FM stations merely duplicated the broadcasting of their AM affiliate. However, only those stations located within the jurisdictional limits of the cities surveyed were counted. Broadcasters located in nearby localities were not counted, although their signals may reach the cities in our survey. Thus Los Angeles does not include Long Beach stations, and Washington, D.C. does not include Arlington, Bethesda, or Baltimore stations, etc., even though they would be readily receivable. However, the figures even out or balance.

Television Data

Television data were taken from Broadcasting and Cable Yearbook. Only those stations actually broadcasting, and not those merely licensed or under construction, are included. Two cautionary notes for television statistics are in order, as well. From 1970 onward, the number of stations are taken from the Arbitron Television Markets, and are not from a simple listing of those stations broadcasting from those particular locations. The data for 1965 and earlier include only those stations listed in the Broadcasting Yearbook as originating from that city, although those figures generally include nearby television stations as well. One other important note must be mentioned: cable figures are not included in the total stations available for each location reported unless they are actually being broadcast from that location.

APPENDIX B

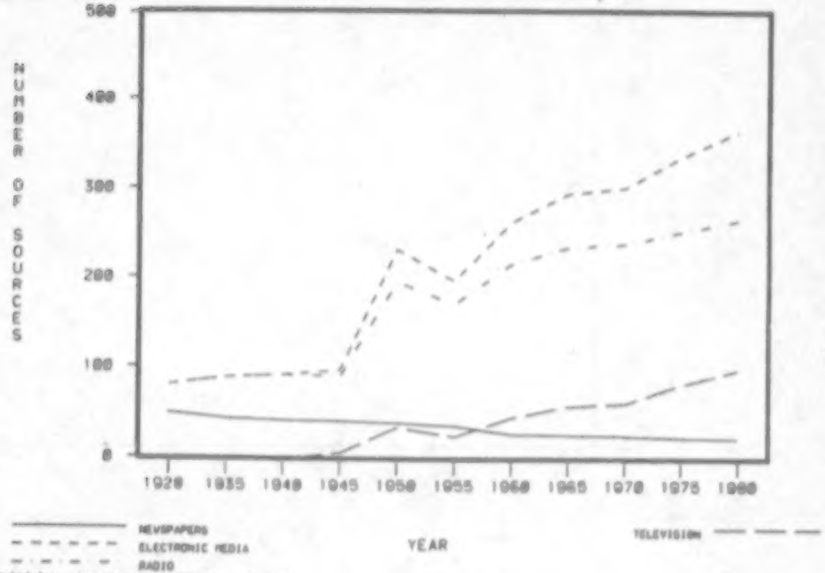
Media Comparisons: Groups Z, A, B, and C

In Section IV, the growth patterns of the different media were charted on a national scale. In this Appendix graphs and raw figures collected for 25 locations are included, (divided into four groups, Z, A, B, and C) starting with the year 1928, then 1934, 1940 and then in five year intervals, ending with 1980. See Appendix A for a discussion of how these locations were selected and how the groups were divided. Graphs VIII through XI on pp. 104-107 provide comparisons of media among these 25 locations over the same time period as the national data.

The results demonstrate the same sharp rise in electronic media after 1945. Clearly, the more urban the location, the faster the growth of electronic media. The raw data for all years and markets are included at the end of this Appendix, as well as pie charts for each year analyzed showing media distribution in each of those years.

GRAPH VIII

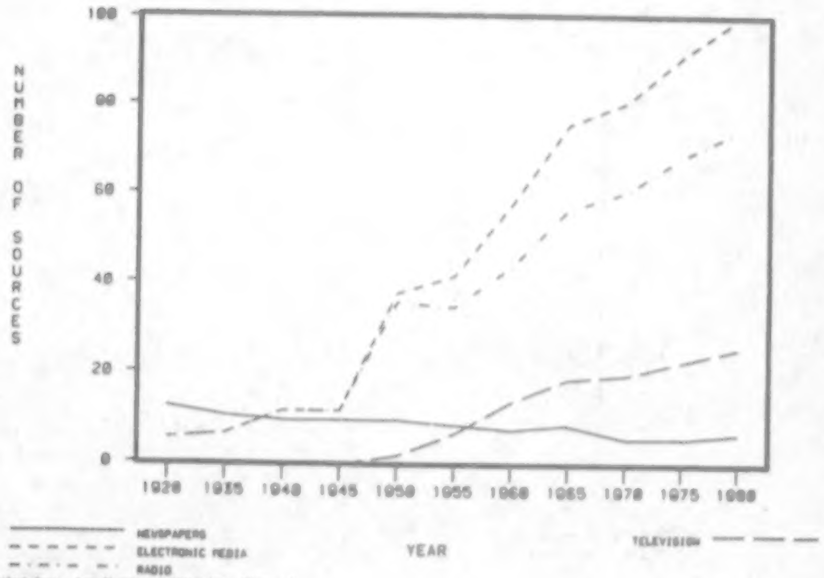
TOP TEN CITIES



Sources: Data derived from: *Ayer Directory of Publications*, *Editor and Publisher International Yearbooks*, *Broadcasting Yearbooks*, and *Report of the Federal Radio Commission of 1928*.

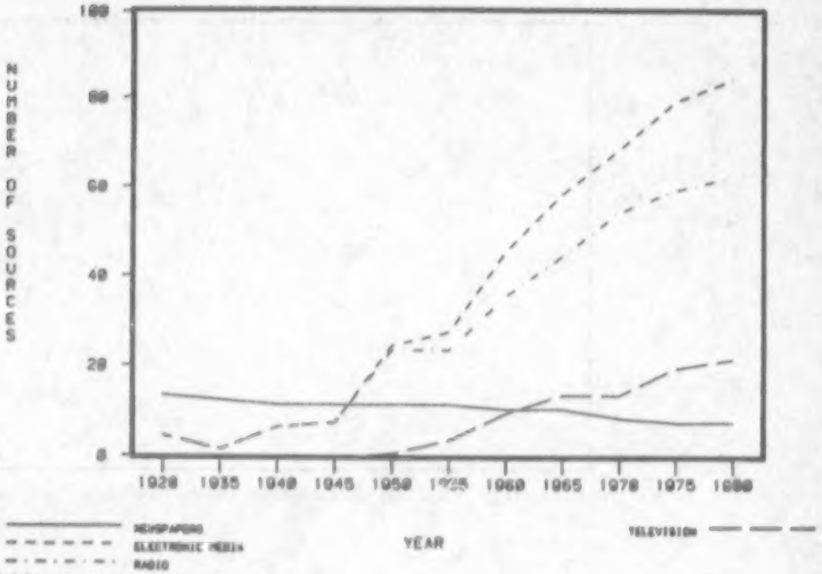
GRAPH IX

51 - 100 MARKET



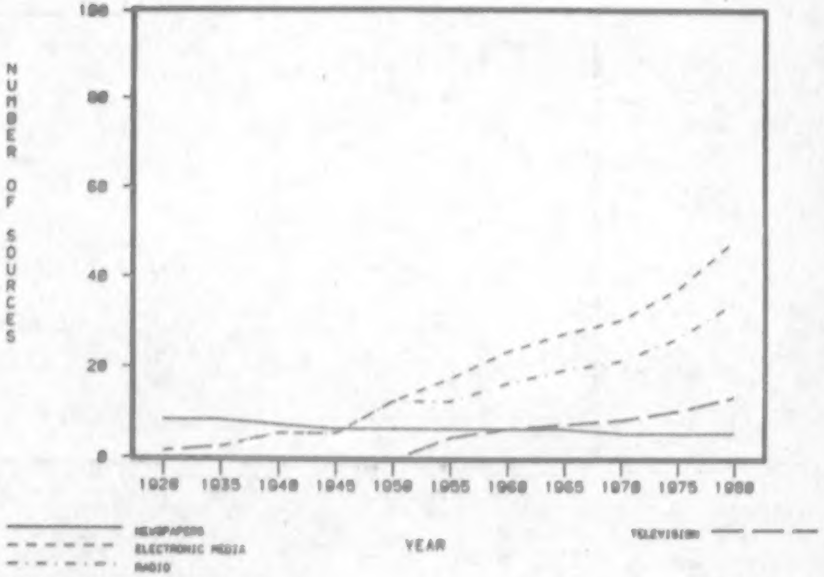
Sources: Data derived from: *Ayer Directory of Publications*, *Editor and Publisher International Yearbooks*, *Broadcasting Yearbooks*, and *Report of the Federal Radio Commission of 1928*.

GRAPH X
101 - 150 MARKET



Sources: Data derived from: Ayer Directory of Publications, Editor and Publisher International Yearbooks, Broadcasting Yearbooks, and Report of the Federal Radio Commission of [illegible].

GRAPH XI
151 - 200 MARKET



Sources: Data derived from: Ayer Directory of Publications, Editor and Publisher International Yearbooks, Broadcasting Yearbooks, and Report of the Federal Radio Commission of [illegible].

U.S. Media Distribution: 1928 to 1982

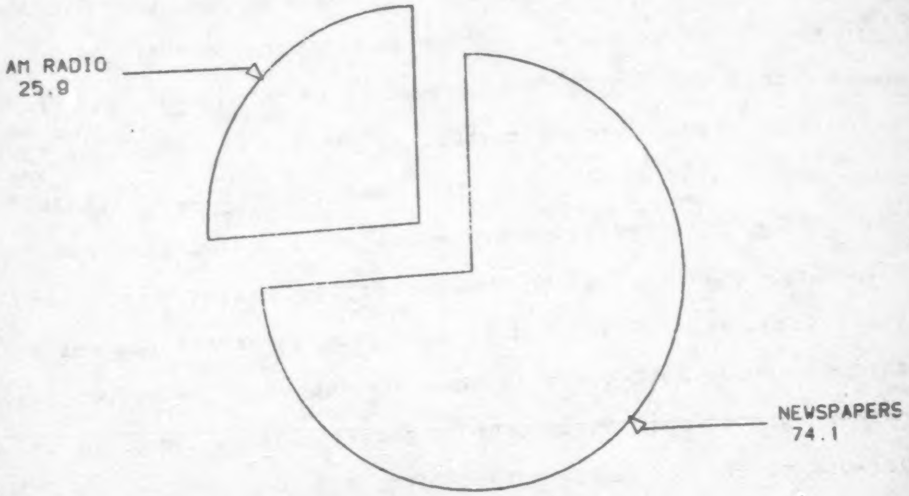
As more fully discussed in Section IV and Appendix A, data was collected for this study on the total numbers of both print (that is, daily newspapers of general interest and circulation) and electronic (that is, AM and FM radio, and VHF and UHF television stations) media outlets available nationally. The following graphs illustrate the total number of media outlets existing in the United States during the years 1928, 1934, 1940, and at five-year intervals thereafter through 1982. Each graph is then divided into the respective percentages of the communications market held by the print and various electronic media outlets for that year.

From these direct comparisons of nationally available outlets, the scarcity rationale increasingly appears to apply to the print media outlets, while the percentage of outlets held by the electronic media grows ever larger, nullifying any such rationale for their regulation.

The percentages were computed by the authors from data collected from: Sterling, The Mass Media Aspen Institute Guide to Communications Industry Trends, Broadcasting Yearbooks, Broadcasting and Cable Yearbook 1981, Report of the Federal Radio Commission of 1928, and Editor and Publisher International Yearbooks.

GRAPH XII

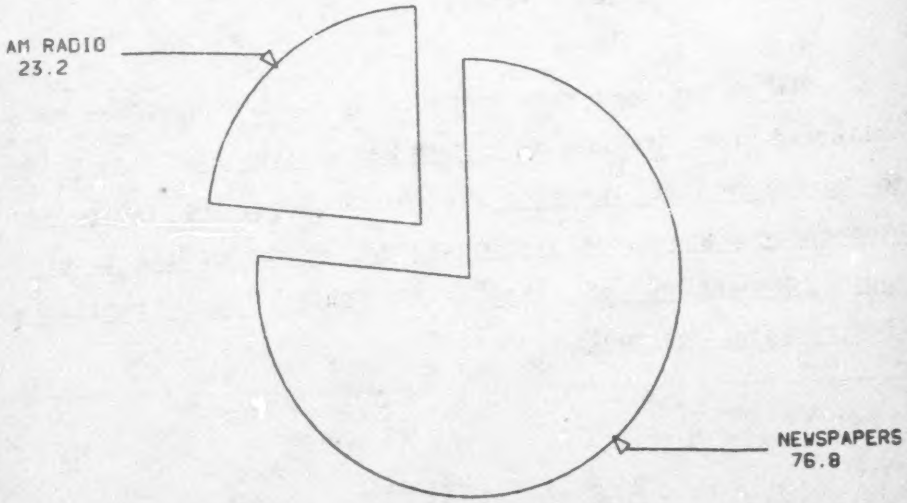
SOURCE (1928)



Sources: Data derived from: Ayer Directory of Publications, Editor and Publisher International Yearbooks, Broadcasting Yearbooks, and Report of the Federal Radio Commission of 1928. (percentages computed by authors)

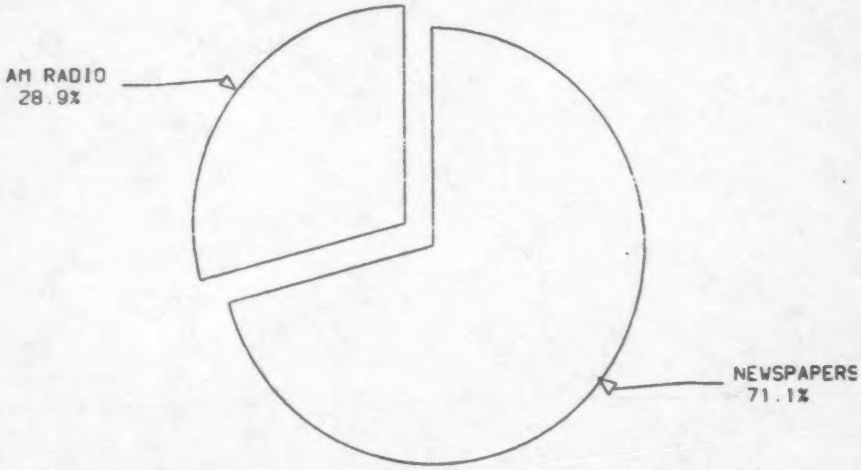
GRAPH XIII

SOURCE (1934)



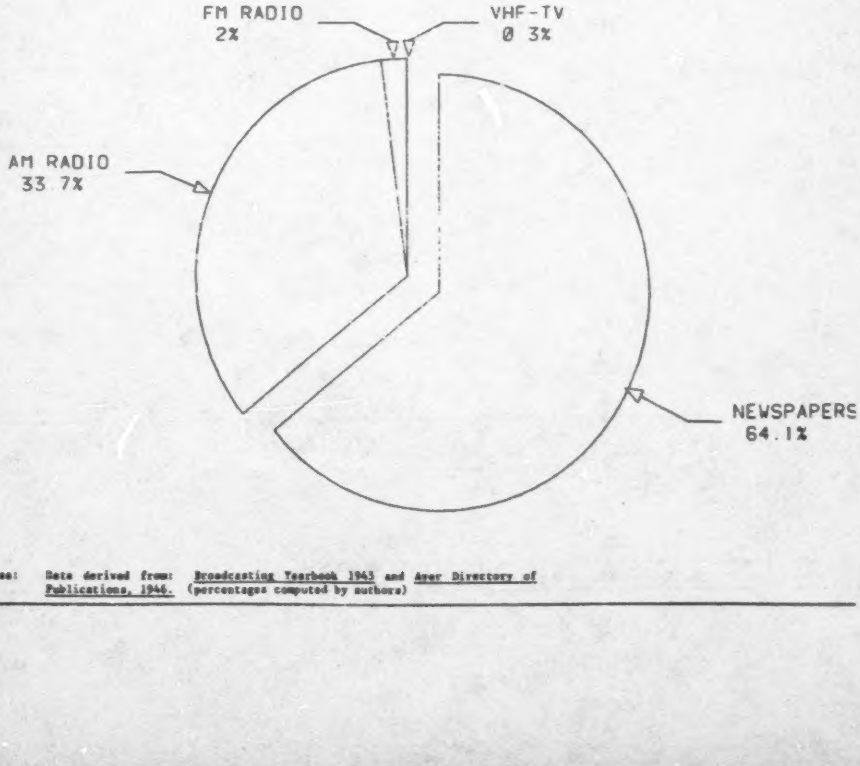
Sources: Data derived from: Broadcasting Yearbook 1935 and Ayer Directory of Publications, 1936. (percentages computed by authors)

GRAPH XIV
SOURCE (1940)



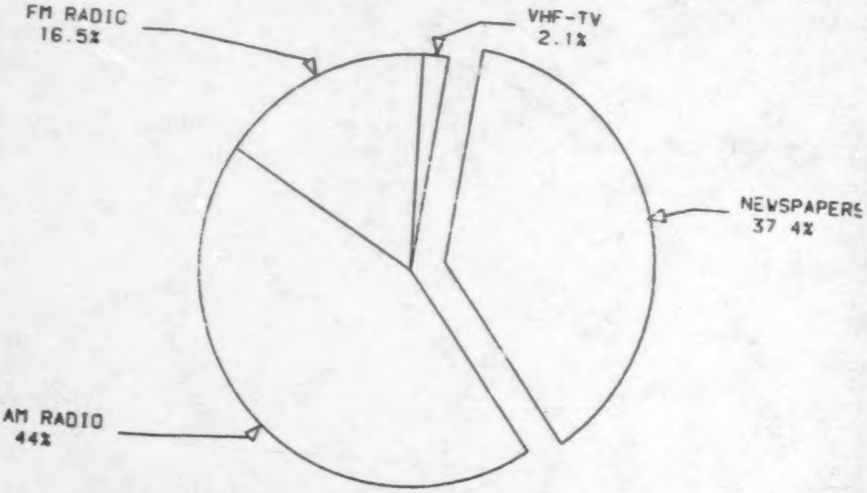
Sources: Data derived from: *Broadcasting Yearbook 1940* and *Ayer Directory of Publications, 1941*. (percentages computed by authors)

GRAPH XV
SOURCE (1945)



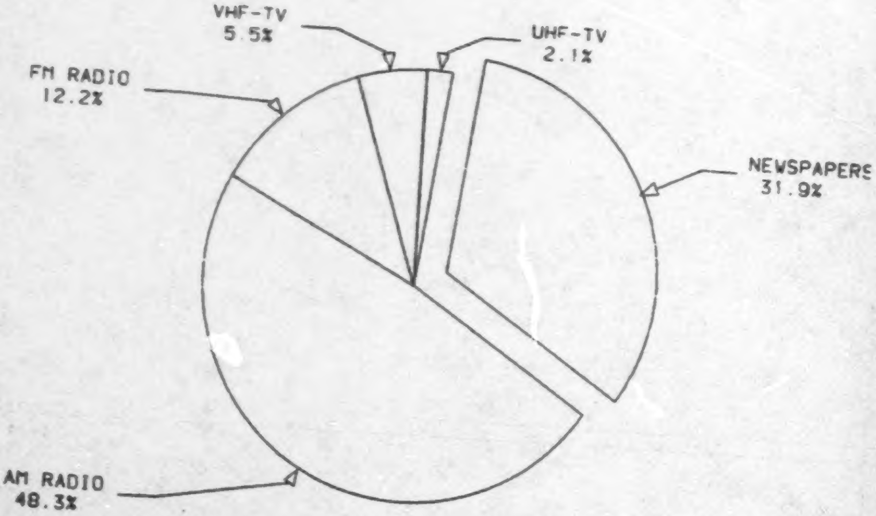
Sources: Data derived from: *Broadcasting Yearbook 1945* and *Ayer Directory of Publications, 1946.* (percentages computed by authors)

GRAPH XVI
SOURCE (1950)



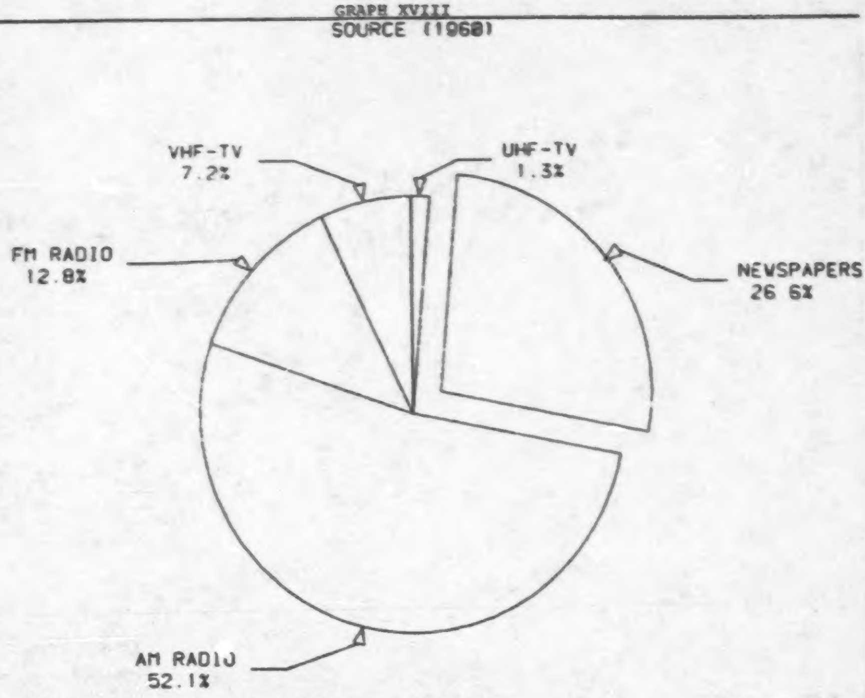
Sources: Data derived from: *Broadcasting Yearbook 1950* and *Ayer Directory of Publications 1951*. (percentages computed by authors)

GRAPH XVII
SOURCE (1955)



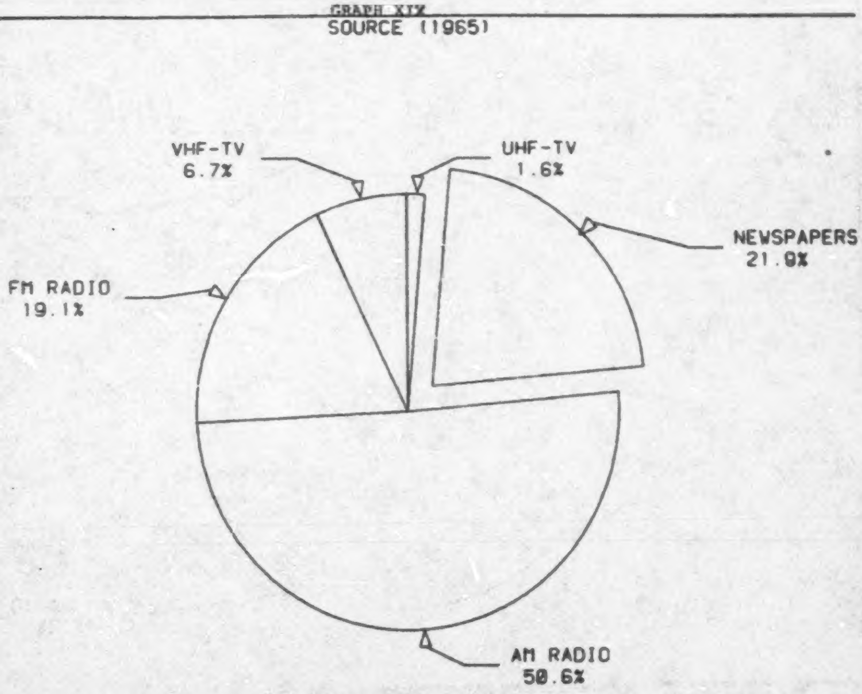
Sources: Data derived from: *Broadcasting Yearbook 1955* and *Ayer Directory of Publications, 1956*. (percentages computed by authors)

GRAPH XVIII



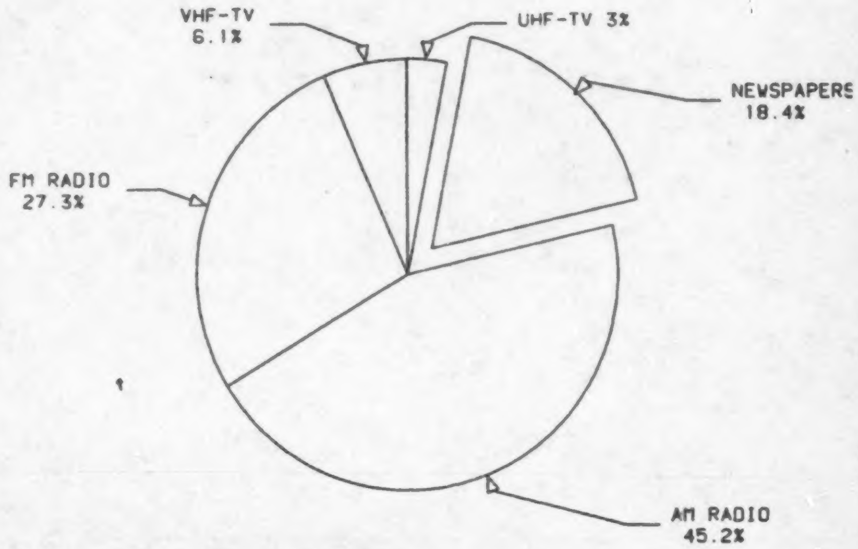
Sources: Data derived from: Broadcasting Yearbook 1960 and Ayer Directory of Publications, 1961. (percentages computed by authors)

GRAPH XIX



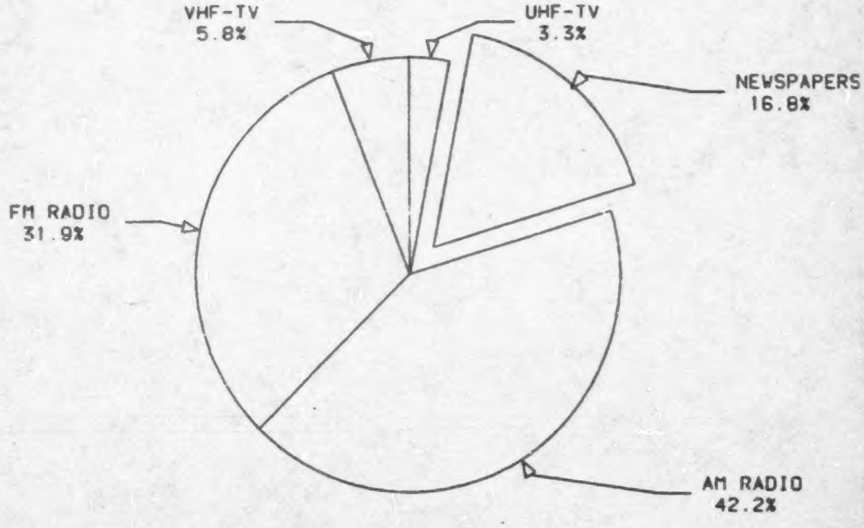
Sources: Data derived from: Broadcasting Yearbook 1965 and Ayer Directory of Publications, 1966. (percentages computed by authors)

GRAPH XX
SOURCE (1970)



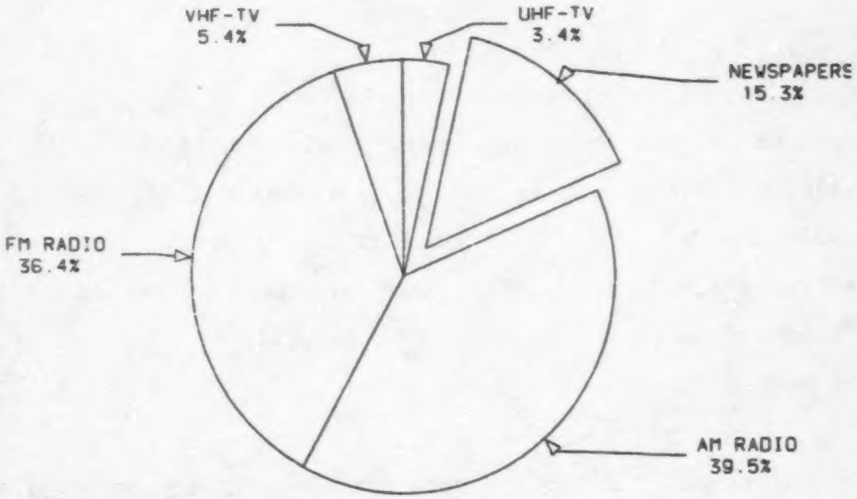
Sources: Data derived from: Editor and Publisher International Yearbook, 1971 and Broadcasting Yearbook 1970. (percentages computed by authors)

GRAPH XXI
SOURCE (1975)



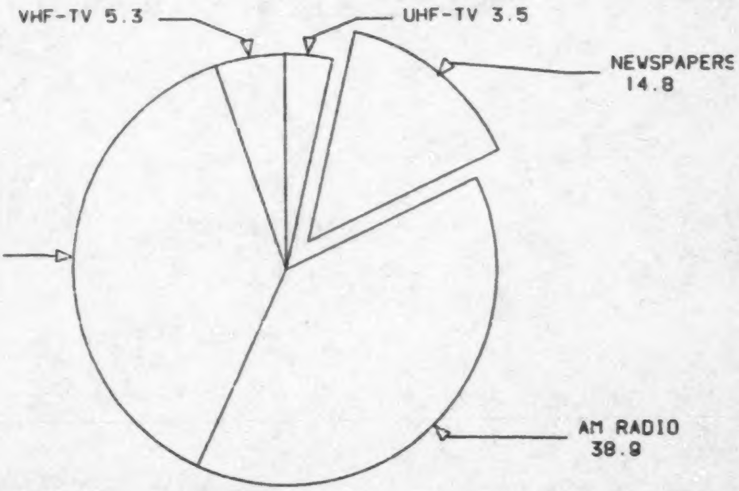
Sources: Data derived from: Editor and Publisher International Yearbook, 1976 and Broadcasting Yearbook 1975. (percentages computed by authors)

GRAPH XXII
SOURCE (1980)



Sources: Data derived from: Editor and Publisher International Yearbook, 1981 and Broadcasting and Cable Yearbook 1980. (percentages computed by authors)

GRAPH XXIII
SOURCE (1982)



Sources: Data derived from: American Newspaper Publishers Association, Facts About Newspapers 1982 and "Summary of Broadcasting," Broadcasting, December 27, 1982, p. 25. (percentages computed by authors)

TABLES OF DATA COLLECTED

The following pages list the data collected on the numbers of print and electronic media outlets available in 1928, 1934, 1940 and in five year intervals thereafter up to and including 1980. For each of those years, figures are provided for U.S. totals, and for each of the 25 cities selected for this study. (See Appendix A for selection methodology.)

Data for U.S. totals were derived from Broadcasting and Cable Yearbook 1981 and Sterling, The Mass Media Aspen Institute Guide to Communications Industry Trends. Data for the individual 25 cities were derived from Ayer Directory of Publications, Editor and Publisher International Yearbooks, Report of the Federal Radio Commission of 1928, Broadcasting Yearbooks and Broadcasting and Cable Yearbook 1980.

1928 MEDIA COMPARISONS

LOCATION	DAILY NEWS PAPER	AM RADIO	FM RADIO	VHF TV	UHF TV
USA	1939	677			
GROUP Z					
NEW YORK, NEW YORK	12	16			
CHICAGO, ILLINOIS	6	19			
PHILADELPHIA, PENNSYLVANIA	5	11			
DETROIT, MICHIGAN	3	4			
CLEVELAND, OHIO	3	4			
ST. LOUIS, MISSOURI	4	8			
BOSTON, MASSACHUSETTS	7	5			
BALTIMORE, MARYLAND	3	3			
LOS ANGELES, CALIFORNIA	6	10			
PITTSBURGH, PENNSYLVANIA	3	3			
TOTAL	52	83			
GROUP A					
SYRACUSE, NEW YORK	3	2			
FARGO, NORTH DAKOTA	1	1			
WICHITA-HUTCHINSON, KANSAS	4	1			
TUCSON, ARIZONA	3	1			
FRESNO, CALIFORNIA	2	1			
TOTAL	13	6			
GROUP B					
ERIE, PENNSYLVANIA	2	2			
TALLAHASSEE, FLORIDA	2	0			
WAUSAU-RHINELANDER, WISCONSIN	2	0			
BISMARK-MINOT-DICKINSON, N.D.	3	1			
SANTA BARBARA-SANTA MARIA SAN LOUIS OBISPO, CALIFORNIA	5	2			
TOTAL	14	5			
GROUP C					
BILLINGS-HARDIN, MONTANA	1	1			
ARDMORE-ADA, OKLAHOMA	3	0			
BOWLING GREEN, KENTUCKY	2	0			
EUREKA, CALIFORNIA	2	0			
SALISBURY, MARYLAND	1	1			
TOTAL	9	3			

1934-35 MEDIA COMPARISONS

LOCATION	DAILY NEWS PAPER	AM RADIO	FM RADIO	VHF TV	UHF TV
USA	1929	677			
GROUP Z					
NEW YORK, NEW YORK	10	24			
CHICAGO, ILLINOIS	5	13			
PHILADELPHIA, PENNSYLVANIA	5	9			
DETROIT, MICHIGAN	3	6			
LOS ANGELES, CALIFORNIA	5	13			
CLEVELAND, OHIO	3	4			
ST. LOUIS, MISSOURI	3	5			
BALTIMORE, MARYLAND	2	4			
BOSTON, MASSACHUSETTS	7	8			
PITTSBURG, PENNSYLVANIA	3	5			
TOTAL	46	91			
GROUP A					
SYRACUSE, NEW YORK	3	2			
FARGO, NORTH DAKOTA	1	1			
WICHITA-HUTCHINSON, KANSAS	4	1			
TUCSON, ARIZONA	2	2			
FRESNO, CALIFORNIA	1	1			
TOTAL	11	7			
GROUP B					
ERIE, PENNSYLVANIA	2	1			
TALLAHASSEE, FLORIDA	1	0			
WAUSAU-RHINELANDER, WISCONSIN.	2	0			
BISMARK-MINOT-DICKINSON, N.D.	3	1			
SANTA BARBARA-SANTA MARIA SAN LOUIS OBISPO, CALIFORNIA	5	1			
TOTAL	13	2			
GROUP C					
BILLINGS-HARDIN, MONTANA	1	1			
ARDMORE-ADA, OKLAHOMA	3	1			
BOWLING GREEN, KENTUCKY	2	0			
EUREKA, CALIFORNIA	2	1			
SALISBURY, MARYLAND	1	0			
TOTAL	9	3			

1940 MEDIA COMPARISONS

LOCATION	DAILY NEWS PAPER	AM RADIO	FM RADIO	VHF TV	UHF TV
USA	1878	765			
GROUP Z					
NEW YORK, NEW YORK	9	21			
CHICAGO, ILLINOIS	4	15			
PHILADELPHIA, PENNSYLVANIA .	5	9			
DETROIT, MICHIGAN	3	6			
LOS ANGELES, CALIFORNIA . . .	4	12			
CLEVELAND, OHIO	3	4			
BALTIMORE, MARYLAND	2	4			
ST. LOUIS, MISSOURI	3	8			
BOSTON, MASSACHUSETTS	8	8			
PITTSBURG, PENNSYLVANIA . . .	3	5			
TOTAL	44	94			
GROUP A					
SYRACUSE, NEW YORK	2	3			
FARGO, NORTH DAKOTA	1	1			
WICHITA-HUTCHINSON, KANSAS . .	4	4			
TUCSON, ARIZONA	2	2			
FRESNO, CALIFORNIA	1	2			
TOTAL	10	12			
GROUP B					
ERIE, PENNSYLVANIA	2	1			
TALLAHASSEE, FLORIDA	2	1			
WAUSAU-RHINELANDER, WISCONSIN.	2	1			
BISMARK-MINOT-DICKINSON, N.D.	3	1			
SANTA BARBARA-SANTA MARIA SAN LOUIS OBISPO, CALIFORNIA .	3	3			
TOTAL	12	7			
GROUP C					
BILLINGS-HARDIN, MONTANA . . .	1	1			
ARDMORE-ADA, OKLAHOMA	2	2			
BOWLING GREEN, KENTUCKY . . .	2	1			
EUREKA, CALIFORNIA	2	1			
SALISBURY, MARYLAND	1	1			
TOTAL	8	6			

1945 MEDIA COMPARISONS

LOCATION	DAILY NEWS PAPER	AM RADIO	FM RADIO	VHF TV	UHF TV
USA	1749	919		8	
GROUP Z					
NEW YORK, NEW YORK	9	20		3	
CHICAGO, ILLINOIS	5	15		2	
PHILADELPHIA, PENNSYLVANIA . .	4	9		1	
DETROIT, MICHIGAN	3	6			
LOS ANGELES, CALIFORNIA . . .	4	14		1	
CLEVELAND, OHIO	3	4			
BALTIMORE, MARYLAND	2	5			
ST. LOUIS, MISSOURI	7	3			
BOSTON, MASSACHUSETTS	7	7			
PITTSBURG, PENNSYLVANIA . . .	3	5			
TOTAL	43	92		7	
GROUP A					
SYRACUSE, NEW YORK	3	4			
FARGO, NORTH DAKOTA	1	1			
WICHITA-HUTCHINSON, KANSAS . .	3	4			
TUCSON, ARIZONA	2	1			
FRESNO, CALIFORNIA	1	2			
TOTAL	10	12			
GROUP B					
ERIE, PENNSYLVANIA	2	2			
TALLAHASSEE, FLORIDA	1	1			
WAUSAU-RHINELANDER, WISCONSIN.	2	1			
BISMARK-MINOT-DICKINSON, N.D.	4	1			
SANTA BARBARA-SANTA MARIA SAN LOUIS OBISPO, CALIFORNIA .	3	3			
TOTAL	12	8			
GROUP C					
BILLINGS-HARDIN, MONTANA . . .	1	1			
ARDMORE-ADA, OKLAHOMA	2	2			
BOWLING GREEN, KENTUCKY . . .	1	1			
EUREKA, CALIFORNIA	2	1			
SALISBURY, MARYLAND	1	1			
TOTAL	7	6			

1950 MEDIA COMPARISONS

LOCATION	DAILY NEWS PAPER	AM RADIO	FM RADIO	VHF TV	UHF TV
USA	1772	2086	781	98	0
GROUP Z					
NEW YORK, NEW YORK	7	18	12	6	
CHICAGO, ILLINOIS	4	16	14	4	
PHILADELPHIA, PENNSYLVANIA	3	10	8	3	
LOS ANGELES, CALIFORNIA	5	12	10	7	
DETROIT, MICHIGAN	3	8	7	3	
BALTIMORE, MARYLAND	2	7	6	3	
CLEVELAND, OHIO	3	8	7	3	
ST. LOUIS, MISSOURI	3	8	4	1	
WASHINGTON, D.C.	4	14	14	7	
BOSTON, MASSACHUSETTS	7	9	7	2	
TOTAL	41	110	98	36	
GROUP A					
SYRACUSE, NEW YORK	3	5	4	2	
FARGO, NORTH DAKOTA	1	3	1	-	
WICHITA-HUTCHINSON, KANSAS	3	7	3		
TUCSON, ARIZONA	2	5			
FRESNO, CALIFORNIA	1	5	3		
TOTAL	10	25	11	2	
GROUP B					
ERIE, PENNSYLVANIA	2	4	3	1	
TALLAHASSEE, FLORIDA	1	2	1		
WAUSAU-RHINELANDER, WISCONSIN.	2	2	1		
BISMARK-MINOT-DICKINSON, N.D.	4	2			
SANTA BARBARA-SANTA MARIA SAN LOUIS OBISPO, CALIFORNIA	3	7	2		
TOTAL	12	17	7	1	
GROUP C					
BILLINGS-HARDIN, MONTANA	1	2			
ARDMORE-ADA, OKLAHOMA	2	2	1		
BOWLING GREEN, KENTUCKY	1	2	1		
EUREKA, CALIFORNIA	2	2	1		
SALISBURY, MARYLAND	1	1	1		
TOTAL	7	9	4		

1955 MEDIA COMPARISONS

LOCATION	DAILY NEWS PAPER	AM RADIO	FM RADIO	VHF TV	UHF TV
USA	1760	2669	674	305	
GROUP Z					
NEW YORK, NEW YORK	7	16	11	3	
CHICAGO, ILLINOIS	4	15	9	4	
PHILADELPHIA, PENNSYLVANIA	3	10	7	3	
LOS ANGELES, CALIFORNIA	4	14	8	2	
DETROIT, MICHIGAN	3	7	10	4	
BALTIMORE, MARYLAND	2	11	2	1	
CLEVELAND, OHIO	3	8	7	2	
ST. LOUIS, MISSOURI	2	9	0	2	
WASHINGTON, D.C	3	7	8	3	
BOSTON, MASSACHUSETTS	7	10	4	2	
TOTAL	38	107	66	26	
GROUP A					
SYRACUSE, NEW YORK	2	5	1	2	
FARGO, NORTH DAKOTA	1	4	0	1	
WICHITA-HUTCHINSON, KANSAS	3	7	1	0	
TUCSON, ARIZONA	2	6	1	2	
FRESNO, CALIFORNIA	1	7	3	2	
TOTAL	9	29	6	7	
GROUP B					
ERIE, PENNSYLVANIA	2	4	1	1	
TALLAHASSEE, FLORIDA	1	3	1	0	
WAUSAU-RHINELANDER, WISCONSIN.	2	4	0	1	
BISMARK-MINOT-DICKINSON, N.D.	4	4	0	1	
SANTA BARBARA-SANTA MARIA SAN LOUIS OBISPO, CALIFORNIA	3	7	0	1	
TOTAL	12	22	2	4	
GROUP C					
BILLINGS-HARDIN, MONTANA	1	4	0	2	
ARDMORE-ADA, OKLAHOMA	2	2	0	1	
BOWLING GREEN, KENTUCKY	1	2	1	0	
EUREKA, CALIFORNIA	2	2	1	1	
SALISBURY, MARYLAND	1	1	0	1	
TOTAL	7	11	2	5	

1960 MEDIA COMPARISONS

LOCATION	DAILY NEWS PAPER	AM RADIO	FM RADIO	VHF TV	UHF TV
USA	1763	3456	850	474	85
GROUP I					
NEW YORK, NEW YORK	7	17	18	6	0
CHICAGO, ILLINOIS	4	14	15	5	0
LOS ANGELES, CALIFORNIA . . .	4	13	13	7	0
PHILADELPHIA, PENNSYLVANIA .	3	11	13	3	2
DETROIT, MICHIGAN	2	7	14	4	1
BALTIMORE, MARYLAND	2	9	8	3	0
HOUSTON, TEXAS	3	9	10	4	0
CLEVELAND, OHIO	2	7	10	3	0
WASHINGTON, D.C.	3	6	9	4	0
ST. LOUIS, MISSOURI	2	8	7	5	0
TOTAL	29	101	117	44	3
GROUP A					
SYRACUSE, NEW YORK	2	5	3	2	0
FARGO, NORTH DAKOTA	1	3	0	2	0
WICHITA-HUTCHINSON, KANSAS . .	2	8	3	3	0
TUCSON, ARIZONA	2	10	1	4	0
FRESNO, CALIFORNIA	1	8	3	0	3
TOTAL	8	34	10	11	3
GROUP B					
ERIE, PENNSYLVANIA	2	4	1	1	1
TALLAHASSEE, FLORIDA	1	4	1	1	0
WAUSAU-RHINELANDER, WISCONSIN.	2	4	2	1	0
BISMARK-MINOT-DICKINSON, N.D.	2	7	0	4	0
SANTA BARBARA-SANTA MARIA SAN LUIS OBISPO, CALIFORNIA .	3	8	5	2	0
TOTAL	10	27	9	9	1
GROUP C					
BILLINGS-HARDIN, MONTANA . . .	1	5	0	2	0
ARDMORE-ADA, OKLAHOMA	2	2	0	2	0
BOWLING GREEN, KENTUCKY . . .	1	3	0	0	0
EUREKA, CALIFORNIA	2	3	1	2	0
SALISBURY, MARYLAND	1	3	0	0	1
TOTAL	7	16	1	6	1

1965 MEDIA COMPARISONS

LOCATION	DAILY NEWS PAPER	AM RADIO	FM RADIO	VHF TV	UHF TV
USA	1751	4044	1525	539	129
GROUP Z					
NEW YORK, NEW YORK	6	17	18	6	2
CHICAGO, ILLINOIS	4	14	17	5	2
LOS ANGELES, CALIFORNIA . . .	2	12	20	7	3
PHILADELPHIA, PENNSYLVANIA .	3	11	16	3	4
DETROIT, MICHAGAN	2	6	17	4	2
BALTIMORE, MARYLAND	2	10	9	3	0
HOUSTON, TEXAS	2	9	11	4	0
CLEVELAND, OHIO	2	7	12	3	1
WASHINGTON, D.C	3	6	10	4	2
ST. LOUIS, MISSOURI	2	9	6	5	0
TOTAL	28	101	136	44	16
GROUP A					
SYRACUSE, NEW YORK	3	5	4	3	0
FARGO, NORTH DAKOTA	4	4	2	4	0
WICHITA-HUTCHINSON, KANSAS . .	3	8	4	3	0
TUCSON, ARIZONA	4	12	2	4	0
FRESNO, CALIFORNIA	5	10	6	0	5
TOTAL	9	39	18	14	5
GROUP B					
ERIE, PENNSYLVANIA	2	4	2	1	1
TALLAHASSEE, FLORIDA	2	4	2	2	0
WAUSAU-RHINELANDER, WISCONSIN.	2	4	3	2	0
BISMARK-MINOT-DICKINSON, N.D.	5	4	0	5	0
SANTA BARBARA-SANTA MARIA-SAN LOUIS OBISPO, CALIFORNIA .	3	13	9	3	0
TOTAL	11	29	16	13	1
GROUP C					
BILLINGS-HARDIN, MONTANA . . .	2	6	1	2	0
ARDMORE-ADA, OKLAHOMA . . .	2	2	0	2	0
BOWLING GREEN, KENTUCKY . . .	1	3	1	1	0
EUREKA, CALIFORNIA	2	3	0	2	0
SALISBURY, MARYLAND	1	3	1	0	1
TOTAL	7	17	3	7	1

1970 MEDIA COMPARISONS

LOCATION	DAILY NEWS PAPER	AM RADIO	FM RADIO	VHF TV	UHF TV
USA	1748	4292	2597	581	281
GROUP I					
NEW YORK, NEW YORK	5	17	17	7	2
CHICAGO, ILLINOIS	4	14	16	4	3
LOS ANGELES, CALIFORNIA . .	2	12	20	7	4
PHILADELPHIA, PENNSYLVANIA .	3	11	17	3	3
DETROIT, MICHIGAN	2	6	17	4	2
HOUSTON, TEXAS	2	10	13	3	1
BALTIMORE, MARYLAND	2	10	9	3	1
DALLAS, TEXAS	2	7	9	4	1
WASHINGTON, D.C.	3	6	11	4	2
CLEVELAND, OHIO	2	7	12	3	2
TOTAL	27	100	141	42	21
GROUP A					
SYRACUSE, NEW YORK	2	5	5	3	1
FARGO, NORTH DAKOTA	0	4	2	3	0
WICHITA-HUTCHINSON, KANSAS . .	2	8	6	4	0
TUCSON, ARIZONA	1	12	3	5	0
FRESNO, CALIFORNIA	1	10	6	0	4
TOTAL	6	39	22	15	5
GROUP B					
ERIE, PENNSYLVANIA	2	4	2	1	2
TALLAHASSEE, FLORIDA	1	4	4	1	0
WAUSAU-RHINELANDER, WISCONSIN.	2	4	4	3	0
BISMARK-MINOT-DICKINSON, N.D.	1	8	4	4	0
SANTA BARBARA-SANTA MARIA SAN LUIS OBISPO, CALIFORNIA .	3	12	9	3	0
TOTAL	6	16	6	8	1
GROUP C					
BILLINGS-HARDIN, MONTANA . . .	1	6	2	2	0
ARDMORE-ADA, OKLAHOMA	2	2	0	2	0
BOWLING GREEN, KENTUCKY . . .	1	3	1	1	1
EUREKA, CALIFORNIA	1	2	1	2	0
SALISBURY, MARYLAND	1	3	2	1	0
TOTAL	6	16	6	8	1

1975 MEDIA COMPARISONS

LOCATION	DAILY NEWS PAPER	AM RADIO	FM RADIO	VHF TV	UHF TV
USA	1768	4432	3353	608	344
GROUP Z					
NEW YORK, NEW YORK	5	15	19	7	8
CHICAGO, ILLINOIS	3	14	22	5	4
LOS ANGELES, CALIFORNIA	2	12	19	7	7
PHILADELPHIA, PENNSYLVANIA	3	11	18	4	6
HOUSTON, TEXAS	2	11	14	4	2
DETROIT, MICHIGAN	2	6	17	4	4
BALTIMORE, MARYLAND	2	10	10	3	3
DALLAS, TEXAS	3	7	12	5	1
SAN DIEGO, CALIFORNIA	1	4	9	3	2
SAN ANTONIO, TEXAS	2	11	10	4	1
TOTAL	25	105	150	46	38
GROUP A					
SYRACUSE, NEW YORK	1	6	6	3	2
FARGO, NORTH DAKOTA	1	3	2	5	0
WICHITA-HUTCHINSON, KANSAS	2	8	9	4	0
TUCSON, ARIZONA	1	12	6	5	0
FRESNO, CALIFORNIA	1	10	7	0	4
TOTAL	6	39	30	17	6
GROUP B					
ERIE, PENNSYLVANIA	1	4	4	1	3
TALLAHASSEE, FLORIDA	1	5	4	2	1
WAUSAU-RHINELANDER, WISCONSIN	2	4	4	3	1
BISMARK-MINOT-DICKINSON, N.D.	1	8	4	6	0
SANTA BARBARA-SANTA MARIA SAN LOUIS OBISPO, CALIFORNIA	3	12	11	3	0
TOTAL	8	33	27	15	5
GROUP C					
BILLINGS-HARDIN, MONTANA	1	6	4	2	0
ARDMORE-ADA, OKLAHOMA	2	2	2	2	0
BOWLING GREEN, KENTUCKY	1	3	2	0	2
EUREKA, CALIFORNIA	1	2	1	3	0
SALISBURY, MARYLAND	1	3	2	0	2
TOTAL	6	16	11	7	4

1980 MEDIA COMPARISONS

LOCATION	DAILY NEWS PAPER	AM RADIO	FM RADIO	VHF TV	UHF TV
USA	1763	4559	4193	622	391
GROUP Z					
NEW YORK, NEW YORK	5	17	20	7	10
CHICAGO, ILLINOIS	2	13	25	5	6
LOS ANGELES, CALIFORNIA . . .	3	12	20	7	9
PHILADELPHIA, PENNSYLVANIA . .	4	11	19	4	11
HOUSTON, TEXAS	2	11	15	4	3
DETROIT, MICHAGAN	2	6	17	4	4
DALLAS, TEXAS	2	7	12	5	4
SAN DIEGO, CALIFORNIA	2	6	13	3	2
BALTIMORE, MARYLAND	2	10	12	3	4
SAN ANTONIO, TEXAS	2	11	11	4	1
TOTAL	26	104	164	46	54
GROUP A					
SYRACUSE, NEW YORK	1	6	6	3	2
FARGO, NORTH DAKOTA	1	4	3	4	0
WICHITA-HUTCHINSON, KANSAS . .	2	8	10	6	0
TUCSON, ARIZONA	2	12	6	5	0
FRESNO, CALIFORNIA	1	10	10	0	6
TOTAL	7	40	35	18	8
GROUP B					
ERIE, PENNSYLVANIA	1	4	4	1	3
TALLAHASSEE, FLORIDA	1	5	6	2	2
WAUSAU-RHINELANDER, WISCONSIN.	2	4	4	3	2
BISMARK-MINOT-DICKINSON, N.D.	1	9	4	6	0
SANTA BARBARA-SANTA MARIA SAN LOUIS OBISPO, CALIFORNIA .	3	12	11	3	0
TOTAL	8	34	29	15	7
GROUP C					
BILLINGS-HARDIN, MONTANA . . .	1	6	7	3	0
ARDMORE-ADA, OKLAHOMA	2	2	4	2	0
BOWLING GREEN, KENTUCKY . . .	1	3	3	1	1
EUREKA, CALIFORNIA	1	3	2	2	1
SALISBURY, MARYLAND	1	3	2	0	4
TOTAL	6	17	19	8	6

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